

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members
FROM JBC Staff
DATE April 11, 2018
SUBJECT Packet #2 - JBC Bill Drafts

This memo includes the following bill drafts for the Committees consideration.

- JBC Bill #32&33 – LLS 0857 “Concerning Broadband Deployment into Unserved Areas of the State, and, in Connection Therewith, Making an Appropriation.” (Vance Roper)
- JBC Bill #58 – LLS 1068 “Concerning Evidence-based Review of State Programs by a Laboratory at an Institution of Higher Education, and, in Connection Therewith, Making and Reducing Appropriations.” (Vance Roper)
- JBC Bill #20 – LLS 1049 “Concerning Reforms to Child Welfare Services.” (Robin Smart)
- JBC Bill #21 – LLS 1106 Competency Related Bills – 4 total drafts (Carolyn Kampman)
 - 1 of 4 - “Concerning Actions Related to Determinations of Competency to Proceed.”
 - 2 of 4 - Draft titled “Concerning the Provision of Jail-based Behavioral Health Services.”
 - 3 of 4 - Draft titled “Concerning Establishing a Statewide Behavioral Health Court Liaison Program.”
 - 4 of 4 – draft not ready
- JBC Bill #26 – LLS 1099 “Concerning the Creation of the Justice Center Maintenance Fund.” (Steve Allen)
 - Memo titled “JBC Bill for Judicial Center Controlled Maintenance”
- JBC Bill #75 – LLS 1184 Higher Education Funding (Amanda Bickel)
 - Memo titled “OLLS 18-1184 – JBC Bill for \$18.0 million for Institutions of Higher Education”

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

UNEDITED
UNREVISED
DRAFT
4.9.18

DRAFT

LLS NO. 18-0857.01 Jennifer Berman x3286

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Broadband Support Mechanism & Deployment"

A BILL FOR AN ACT

101 **CONCERNING BROADBAND DEPLOYMENT INTO UNSERVED AREAS OF**
102 **THE STATE, AND, IN CONNECTION THEREWITH, MAKING AN**
103 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Budget Committee. Sections 1 through 4 move the function of deploying broadband grants to unserved areas of the state from the broadband deployment board created in the department of regulatory agencies to the Colorado office of economic development (office). Section 4 also:

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- Allows public-private partnerships to apply for broadband deployment grant awards;
- Allows nonprofit entities to apply for broadband deployment grant awards for an unserved area if for-profit entities and public-private partnerships have not applied for broadband deployment grant awards in that area. A local government entity may so apply only if the local government entity has been authorized to provide or offer broadband service by a vote of the people served by the local government entity at an election or by statutory exemption.
- Requires the office, on or before September 1, 2018, to establish a reverse auction process for granting broadband deployment grant awards.

Section 8 appropriates \$8 million from the general fund to the office for the purpose of making broadband deployment grant awards.

Sections 5 through 7 make conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal** 40-15-509.5.

3 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**
4 **as amended by Senate Bill 18-002** (25)(a)(VI) as follows:

5 **24-34-104. General assembly review of regulatory agencies**
6 **and functions for repeal, continuation, or reestablishment - legislative**
7 **declaration - repeal.** (25) (a) The following agencies, functions, or both,
8 are scheduled for repeal on September 1, 2024:

9 (VI) The BROADBAND DEPLOYMENT functions of the ~~broadband~~
10 ~~deployment board created~~ COLORADO OFFICE OF ECONOMIC
11 DEVELOPMENT AS SET FORTH in section ~~40-15-509.5~~ **24-48.5-403**;

12 **SECTION 3.** In Colorado Revised Statutes, 24-48.5-101, **add**
13 **(2)(i)** as follows:

14 **24-48.5-101. Colorado office of economic development -**
15 **creation - duties - report.** (2) The Colorado office of economic
16 development shall:

1 (i) IMPLEMENT THE BROADBAND DEPLOYMENT GRANT PROGRAM
2 PURSUANT TO PART 4 OF THIS ARTICLE 48.5.

3 **SECTION 4.** In Colorado Revised Statutes, **add with amended**
4 **and relocated provisions, as amended by Senate Bill 18-002, Senate**
5 **Bill 104, House Bill 18-1099, and House Bill 1116,** part 4 to article 48.5
6 of title 24 as follows:

7 PART 4

8 BROADBAND DEPLOYMENT GRANT PROGRAM

9 **24-48.5-401. Short title.** The short title of this part 4 is the
10 "Connect Colorado to Enhance Economic Development, Telehealth,
11 Education, and Safety Act".

12 **24-48.5-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE
13 CONTEXT OTHERWISE REQUIRES:

14 (1) "AUCTION RULES" REFERS TO THE FCC'S RULES IN 47 CFR
15 54.309 TO 54.316, WHICH RULES CONCERN THE IMPLEMENTATION OF THE
16 CONNECT AMERICA FUND PHASE II AUCTION.

17 (2) "BROADBAND" OR "BROADBAND SERVICE" HAS THE MEANING
18 SET FORTH IN SECTION 40-15-102 (3.3).

19 (3) "BROADBAND INTERNET SERVICE" HAS THE MEANING SET
20 FORTH IN SECTION 40-15-102 (3.5).

21 (4) "BROADBAND NETWORK" HAS THE MEANING SET FORTH IN
22 SECTION 40-15-102 (3.7).

23 (5) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION
24 CREATED IN SECTION 40-2-101.

25 (6) "COMPETITIVE LOCAL EXCHANGE CARRIER" HAS THE MEANING
26 SET FORTH IN SECTION 40-15-102 (5.5).

27 (7) "CONNECT AMERICA FUND" REFERS TO THE FEDERAL

1 UNIVERSAL SERVICE HIGH-COST PROGRAM THAT ALLOWS ELIGIBLE
2 TELECOMMUNICATIONS PROVIDERS TO RECOVER SOME OF THEIR COSTS
3 FROM THE FEDERAL GOVERNMENT FOR PROVIDING VOICE AND BROADBAND
4 SERVICE IN HIGH-COST AREAS.

5 (8) "CONNECT AMERICA FUND PHASE II AUCTION" OR "AUCTION"
6 REFERS TO A TEN-YEAR AUCTION OF FEDERAL MONEY THROUGH WHICH
7 THE FCC WILL ALLOCATE MONEY, BY MEANS OF A COMPETITIVE BIDDING
8 PROCESS, TO TELECOMMUNICATIONS PROVIDERS WHO COMMIT TO
9 PROVIDING VOICE AND BROADBAND SERVICE IN HIGH-COST AREAS OF THE
10 NATION IN ACCORDANCE WITH THE FCC'S AUCTION RULES.

11 (9) (a) "ELIGIBLE APPLICANT" MEANS AN APPLICANT SEEKING
12 GRANT FUNDING FOR A PROPOSED BROADBAND PROJECT, WHICH
13 APPLICANT HAS A SUFFICIENT BUSINESS TRACK RECORD TO INDICATE THAT
14 THE APPLICANT'S OPERATIONS WILL BE SUSTAINABLE AFTER RECEIVING
15 INFRASTRUCTURE SUPPORT UNDER SECTION 24-48.5-403.

16 (b) THE TERM "ELIGIBLE APPLICANT":

17 (I) IS NOT LIMITED TO FOR-PROFIT ENTITIES AND MAY INCLUDE A
18 LOCAL GOVERNMENT ENTITY THAT, BY VOTE OF THE PEOPLE AT AN
19 ELECTION PURSUANT TO SECTION 29-27-201 OR AS EXEMPTED PURSUANT
20 TO SECTION 29-27-202, IS AUTHORIZED TO PROVIDE OR OFFER TO PROVIDE
21 ADVANCED SERVICE, AS THAT TERM IS DEFINED IN SECTION 29-27-102 (1);
22 AND

23 (II) MAY INCLUDE PUBLIC-PRIVATE PARTNERSHIPS.

24 (10) "FCC" MEANS THE FEDERAL COMMUNICATIONS COMMISSION.

25 (11) "HIGH COST SUPPORT MECHANISM" OR "HCSM" MEANS THE
26 HIGH COST SUPPORT MECHANISM ESTABLISHED PURSUANT TO SECTION
27 40-15-208.

1 (12) "INCUMBENT BROADBAND PROVIDER" MEANS A PROVIDER
2 THAT OFFERS BROADBAND INTERNET SERVICE OVER A BROADBAND
3 NETWORK IN AN AREA COVERED BY AN APPLICATION FILED PURSUANT TO
4 THIS SECTION.

5 (13) "INCUMBENT PROVIDER" HAS THE MEANING SET FORTH IN
6 SECTION 40-15-102 (9.5).

7 (14) "Local entity" means elected members of a county
8 governmnt, municipal government, school district, or board of
9 cooperative educational services in an unserved area.

10 (15) "LOCAL EXCHANGE CARRIER" HAS THE MEANING SET FORTH
11 IN SECTION 40-15-102 (18).

12 (16) "NEW YORK'S PETITION FOR EXPEDITED WAIVER" REFERS TO
13 A PETITION THAT THE STATE OF NEW YORK FILED WITH THE FCC SEEKING
14 A WAIVER FROM THE FCC'S AUCTION RULES WITH REGARD TO THE RULES'
15 LIMITATION PROHIBITING STATE ENTITIES FROM APPLYING FOR FEDERAL
16 MONEY THROUGH THE AUCTION. THE FCC GRANTED THE WAIVER REQUEST
17 ON JANUARY 26, 2017, THUS AUTHORIZING THE STATE OF NEW YORK TO
18 DIRECTLY RECEIVE AND ALLOCATE AUCTION MONEY TO BROADBAND
19 PROJECTS WITHIN THE STATE.

20 (17) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC
21 DEVELOPMENT CREATED IN SECTION 24-48.5-101.

22 (18) "OVERBUILD" OR "OVERBUILDING" MEANS PROVIDING A
23 BROADBAND NETWORK TO A HOUSEHOLD OR HOUSEHOLDS THAT:

24 (a) AT THE TIME OF APPLICATION, EITHER HAVE ACCESS TO A
25 BROADBAND NETWORK OR HAVE RECEIVED FEDERAL SOURCES OF HIGH
26 COST SUPPORT OR FEDERAL BROADBAND GRANTS TO PROVIDE ACCESS TO
27 A BROADBAND NETWORK; AND

1 (b) ACCOUNT FOR TWENTY PERCENT OR MORE OF THE TOTAL
2 HOUSEHOLD OR HOUSEHOLDS TO BE SERVED BY A PROPOSED WIRELESS
3 PROJECT.

4 (19) "REMOTE AREAS FUND" REFERS TO A FUND CREATED BY THE
5 FCC AS PART OF ITS CONNECT AMERICA FUND TO FACILITATE BROADBAND
6 DEPLOYMENT IN EXTREMELY HIGH-COST AREAS OF THE NATION.

7 (20) "Unserved area" means an area of the state that:

8 (I) Lies outside of municipal boundaries or is a city with a
9 population of fewer than seven thousand five hundred inhabitants; and

10 (II) Consists of households that lack access to at least one
11 provider of a broadband network that uses satellite technology and at least
12 one provider of a broadband network that uses nonsatellite technology.

13 (b) "Unserved area" also means any portion of a state or interstate
14 highway corridor that lacks access to a provider of a broadband network.

15 **24-48.5-403. Broadband service - deployment grants - report**
16 **- repeal. [Formerly 40-15-509.5] (1) Short title.** This section shall be
17 known and may be cited as the "Connect Colorado to Enhance Economic
18 Development, Telehealth, Education, and Safety Act".

19 (2) The general assembly hereby finds, determines, and declares
20 that to promote the state policy of providing universal access to
21 broadband service, as set forth in section 40-15-502 (4), it may be
22 necessary to provide financial assistance through additional support
23 mechanisms if competition for local exchange services fails to deliver
24 broadband service throughout the state. "Advanced service" includes
25 "broadband service" for purposes of this section only.

26 (3) The commission may allocate the ~~Colorado~~ high cost support
27 mechanism, established under section 40-15-208, ~~and referred to in this~~

1 ~~section as the "HCSM"~~, for the deployment of broadband service in
2 unserved areas of the state pursuant to this section and section 40-15-208
3 only. The commission may fund the deployment of broadband service in
4 unserved areas of the state through use of the HCSM surcharge and
5 surcharge rate in effect on January 1, 2018. Pursuant to subsection (4) of
6 this section and consistent with sections 40-15-207 and 40-15-208, the
7 commission shall determine funds available for broadband deployment
8 ~~and the administration of the board~~ as prescribed in section 40-15-208 or
9 from the HCSM money that it determines is no longer required by the
10 HCSM to support universal basic service through an effective
11 competition determination. The money available for broadband
12 deployment shall be maintained by the HCSM third-party contractor and
13 held in a separate account from money used for basic voice service.
14 Money held for broadband deployment shall not be disbursed for basic
15 voice service, and money held for basic voice service shall not be
16 disbursed for broadband deployment. The commission shall only disburse
17 money for broadband deployment grants from the HCSM as directed by
18 the ~~board~~ OFFICE. Nothing in this section increases any surcharge rate
19 charged to help fund the HCSM.

20 (4) (a) ~~There is hereby created in the state treasury the broadband~~
21 ~~administrative fund, referred to in this section as the "fund". The fund~~
22 ~~consists of all money allocated from the HCSM for the administration of~~
23 ~~the board and all money that the general assembly may appropriate to the~~
24 ~~fund. The money in the fund is subject to annual appropriation by the~~
25 ~~general assembly for the purposes set forth in this section. All interest~~
26 ~~earned from the investment of money in the fund is credited to the fund.~~
27 ~~All money not expended at the end of the fiscal year remains in the fund~~

1 ~~and does not revert to the general fund or any other fund.~~

2 (b) Repealed.

3 (5) (a) ~~There is hereby created in the department of regulatory~~
4 ~~agencies the broadband deployment board, referred to in this section as~~
5 ~~the "board". The board is an independent board created to~~ OFFICE SHALL
6 implement and administer the deployment of broadband service in
7 unserved areas ~~The department of regulatory agencies shall staff the~~
8 ~~board. The board~~ AND has the powers and duties specified in this section.

9 (b) ~~The board consists of sixteen members, fifteen of whom are~~
10 ~~voting members. The members of the board shall be selected on the basis~~
11 ~~of their knowledge of and interest in broadband service and shall serve~~
12 ~~for four-year terms. A member of the board shall not serve more than two~~
13 ~~consecutive full four-year terms.~~

14 (c) ~~No more than eight voting members of any one major political~~
15 ~~party may serve on the board at the same time. Members of the board are~~
16 ~~entitled to seventy-five dollars per diem for attendance at official~~
17 ~~meetings plus actual and necessary expenses incurred in the conduct of~~
18 ~~official business. Members of the board shall be appointed as follows:~~

19 (I) ~~At least one member from the commission; one member from~~
20 ~~the Colorado office of economic development and international trade in~~
21 ~~the office of the governor; one member from the department of local~~
22 ~~affairs, created in section 24-1-125, C.R.S.; and one member from the~~
23 ~~office of information technology, created in section 24-37.5-103, C.R.S.,~~
24 ~~as appointed by the governor. The governor shall select three of these~~
25 ~~four appointees to serve as voting members of the board.~~

26 (II) ~~Three voting members representing local entities:~~

27 (A) ~~One of whom is a county commissioner, as appointed by the~~

1 ~~president of the senate in consultation with Colorado Counties, Inc.;~~
2 ~~(B) One of whom is a mayor or city councilperson, as appointed~~
3 ~~by the speaker of the house of representatives in consultation with the~~
4 ~~Colorado municipal league; and~~
5 ~~(C) One of whom is any other representative of a local entity and~~
6 ~~who has a background in broadband service and expertise in rural~~
7 ~~economic development, education, or telemedicine, as appointed by the~~
8 ~~minority leader of the senate;~~
9 ~~(HH) Seven voting members representing the broadband industry:~~
10 ~~(A) One of whom represents a wireless provider, as appointed by~~
11 ~~the minority leader of the house of representatives;~~
12 ~~(B) One of whom represents a wireline provider, as appointed by~~
13 ~~the minority leader of the senate;~~
14 ~~(C) One of whom represents a broadband satellite provider, as~~
15 ~~appointed by the governor;~~
16 ~~(D) One of whom represents a cable provider, as appointed by the~~
17 ~~president of the senate;~~
18 ~~(E) One of whom represents a rural local exchange carrier, as~~
19 ~~appointed by the governor;~~
20 ~~(F) One of whom represents a competitive local exchange carrier,~~
21 ~~as appointed by the speaker of the house of representatives; and~~
22 ~~(G) One of whom represents a cable provider serving rural areas,~~
23 ~~as appointed by the president of the senate; and~~
24 ~~(IV) Two voting members of the public:~~
25 ~~(A) One of whom resides in an unserved area of the western slope~~
26 ~~of the state, as appointed by the speaker of the house of representatives;~~
27 ~~and~~

1 ~~(B) One of whom resides in an unserved area of the eastern slope~~
2 ~~of the state, as appointed by the minority leader of the house of~~
3 ~~representatives.~~

4 ~~(C) Repealed.~~

5 ~~(d) The board shall meet as often as necessary to carry out its~~
6 ~~duties as defined in this section.~~

7 ~~(e) The term of any member of the board who misses more than~~
8 ~~two consecutive regular board meetings without good cause shall be~~
9 ~~terminated, and his or her successor shall be appointed in the manner~~
10 ~~provided for appointments under this section.~~

11 ~~(f) (f) If a board member has a conflict of interest with respect to~~
12 ~~any matter addressed by the board, including a financial interest in the~~
13 ~~matter, the member shall recuse himself or herself from any discussion or~~
14 ~~decisions on the matter.~~

15 ~~(H) (A) A board member appointed pursuant to subsection~~
16 ~~(5)(c)(I), (5)(c)(II), or (5)(c)(IV) of this section is not deemed to have a~~
17 ~~conflict of interest merely by virtue of residing in or representing an~~
18 ~~unserved area or an area that is the subject of an application before the~~
19 ~~board.~~

20 ~~(B) A board member appointed pursuant to subsection (5)(c)(III)~~
21 ~~of this section is deemed to have a conflict of interest with respect to an~~
22 ~~application filed by an entity that the board member represents; however,~~
23 ~~if such application is filed, the board member may still participate in~~
24 ~~discussions about other applications before the board, but shall not vote~~
25 ~~on those other applications.~~

26 ~~(g) In the event of a tie vote of the board, the application, appeal,~~
27 ~~proposition, or other matter being voted upon fails.~~

1 (6) Repealed.

2 (7) The ~~board~~ OFFICE shall provide notice to and requests for
3 proposals from incumbent providers, incumbent broadband providers, and
4 local entities about the ~~board's~~ OFFICE'S purpose to deploy broadband
5 service in unserved areas. The ~~board~~ OFFICE shall ensure that both the
6 manner and amount of notice provided under this subsection (7) are
7 adequate and equitable for all potentially eligible applicants.

8 (8) The ~~board~~ OFFICE shall direct the commission to transfer
9 money, in a manner consistent with this section, from the account for
10 broadband deployment established in the HCSM to approved grant
11 applicants. The ~~board~~ OFFICE shall develop criteria for awarding money
12 for new projects into unserved areas, including:

13 (a) UNTIL THE OFFICE DEVELOPS A REVERSE AUCTION PROCESS IN
14 ACCORDANCE WITH SUBSECTION (8.7), developing a project application
15 process that places the burden on an eligible applicant to demonstrate that
16 its proposed project meets the project eligibility criteria established in this
17 subsection (8), including a requirement that the proposal concern a new
18 project, and not a project already in progress, and a requirement to prove
19 that the area to be served by the proposed project is an unserved area. To
20 prove that the area to be served is an unserved area, the applicant must
21 submit a map and a list of household addresses demonstrating the
22 insufficient availability of broadband service in the area. The applicant
23 must submit the application, map, and list of household addresses to the
24 ~~board~~ OFFICE; the board of county commissioners, city council, or other
25 local entity with authority over the area to be served; and all incumbent
26 providers or incumbent broadband providers that provide broadband
27 internet service or broadband service in the area proposed to be served in

1 the application. The ~~board~~ OFFICE shall establish a notice and comment
2 period of at least sixty days within which the local entity may review and
3 comment on the application.

4 (b) Developing a methodology for determining whether a
5 proposed project will serve unserved areas;

6 (c) Denying funding for applications that overbuild areas
7 receiving federal sources of high cost support or federal broadband grants
8 for construction of a broadband network that will be completed within
9 twenty-four months after the date that the applicant filed the application
10 so as to maximize the total available state and federal support for rural
11 broadband development. An incumbent broadband provider receiving
12 federal funds must submit to the ~~board~~ OFFICE an affidavit from a
13 company officer that the build-out will be completed within the
14 twenty-four-month period. Upon completion of the project, an incumbent
15 broadband provider will provide documentation to the ~~board~~ OFFICE that
16 demonstrates that the unserved addresses meet the minimum download
17 and upload speeds established in the FCC's definition of high-speed
18 internet access or broadband. If the incumbent broadband provider fails
19 to meet the commitment made in the affidavit filed, the ~~board~~ OFFICE may
20 award a grant to another provider to provide service for the addresses that
21 remain unserved.

22 (c.5) Denying funding for overbuilding of existing broadband
23 networks in order to maximize the total available support for financing
24 rural broadband development;

25 (d) Ensuring that a proposed project includes:

26 (I) Access to measurable speeds of at least ten megabits per
27 second downstream and one megabit per second upstream or measurable

1 speeds at least equal to the FCC's definition of high-speed internet access
2 or broadband, whichever is faster;

3 (II) Independent funding secured for at least twenty-five percent
4 of the total cost of the proposed project; and

5 (III) A requirement to utilize any award granted from the fund for
6 infrastructure purposes only and not for operations;

7 (e) Providing additional consideration for proposed projects that
8 include at least some of the following factors:

9 (I) Proposed projects that provide service to residential and
10 business addresses that lack broadband internet service at measurable
11 speeds of at least ten megabits per second downstream and one megabit
12 per second upstream;

13 (II) Proposed projects that are endorsed by local entities interested
14 in obtaining broadband internet service in unserved areas of the state;

15 ~~(III) Proposed projects that have of at least ten megabits per~~
16 ~~second downstream and one megabit per second upstream or measurable~~
17 ~~speeds at least equal to the FCC's definition of high-speed internet access~~
18 ~~or broadband, whichever is faster; <~~*This language was added by*
19 *amendment in SB 002, but it duplicates language already in subsection*
20 *(8)(d)(I). Therefore, this language can be repealed.*~~>~~

21 (IV) Proposed projects for which the applicant has an established
22 record of operation in the area of the grant application; and

23 (V) Proposed projects providing last-mile broadband service,
24 which is defined as the portion of broadband service that delivers an
25 internet connection to an end user that lacks access to broadband service
26 at measurable speeds greater than fifty-six kilobits per second;

27 (f) Providing an assessment of the following factors:

1 (I) Whether the proposed project will provide services via a
2 licensed or unlicensed means of transmission;

3 (II) The cost-effectiveness of the proposed project's proposed
4 method for expanding broadband internet service into unserved areas; and

5 (III) The reliability of the network providing broadband services;

6 (g) (I) With regard to an applicant that has submitted a proposed
7 project to the ~~board~~ OFFICE, affording each incumbent provider in the area
8 that is not providing access to a broadband network in the unserved area
9 a right of first refusal regarding the implementation of a project in the
10 unserved area.

11 (II) If an incumbent provider proposes a project for the area, the
12 incumbent provider commits to providing access to a broadband network:

13 (A) Within one year after the applicant's submission of a proposed
14 project;

15 (B) At demonstrated downstream and upstream speeds equal to or
16 faster than the speeds indicated in the applicant's proposed project; and

17 (C) At a cost per household in the area to be served that is equal
18 to or less than the cost per household indicated in the applicant's proposed
19 project. <{*This subsection (8)(g) has been updated to incorporate the*
20 *language of HB 1099, which, along with SB 002, was signed by the*
21 *governor on April 2.*>

22 (h) Ensuring that broadband service grant awards are not provided
23 in areas other than unserved areas;

24 (i) In the case of a franchise agreement, ensuring that broadband
25 service grant awards are not provided in areas with a population density
26 large enough to require service under an existing franchise agreement;

27 (j) ALLOWING A PUBLIC ENTITY, INCLUDING A LOCAL GOVERNMENT

1 ENTITY THAT, BY VOTE OF THE PEOPLE AT AN ELECTION PURSUANT TO
2 SECTION 29-27-201 OR AS EXEMPTED PURSUANT TO SECTION 29-27-202,
3 IS AUTHORIZED TO PROVIDE OR OFFER TO PROVIDE ADVANCED SERVICE, AS
4 THAT TERM IS DEFINED IN SECTION 29-27-102 (1), TO APPLY TO SERVE AN
5 UNSERVED AREA ONLY IF NO PRIVATE, FOR-PROFIT ENTITY OR
6 PUBLIC-PRIVATE PARTNERSHIP HAS YET APPLIED FOR APPROVAL OF A
7 PROJECT TO SERVE THAT UNSERVED AREA;

8 ~~(j)~~ (k) Establishing a grant award process that:

9 (I) Allows an applicant to apply for grants on multiple projects in
10 a given year if the applicant makes a separate application for each project.
11 The ~~board~~ OFFICE may approve more than one of the applicant's projects
12 within a single year.

13 (II) Ensures the geographically equitable distribution of grant
14 awards;

15 (III) Provides for an appeals process for any party aggrieved by an
16 award or denial of grant money, whether exercising a right of first refusal,
17 having filed any comments regarding the initial grant application, or both.
18 If a provider of broadband service or a broadband network that alleges
19 funding provided pursuant to this section will overbuild the provider's
20 broadband network, the provider is an aggrieved party with standing to
21 appeal under this subsection ~~(8)(j)(HH)~~ (8)(k)(III).

22 (IV) Requires the ~~board~~ OFFICE to consider appeals alleging that
23 the application area is no longer unserved because federal support
24 improves a broadband network for service locations that are adjacent to
25 the area receiving the federal award and are within the application area.

26 ~~(k)~~ (l) Establishing reporting and accountability requirements for
27 a project receiving financial support from the fund, including contractual

1 requirements that:

2 (I) The applicant secure a performance bond for the project, as
3 appropriate;

4 (II) The applicant demonstrate an ability to provide broadband
5 service at a reasonable cost per household in the area to be served by the
6 proposed project;

7 (III) The applicant demonstrate an ability to complete the
8 proposed project within a reasonable time, not to exceed two years, unless
9 delayed by a government entity; and

10 (IV) Prohibit an applicant from using grant award ~~moneys~~ MONEY
11 to offer, provide, or sell broadband services in an area not meeting the
12 definition of unserved area.

13 (8.5) (a) The ~~board~~ OFFICE shall deny an application that contains
14 an area that does not meet the definition of unserved area and shall grant
15 an appeal to an incumbent broadband provider that demonstrates, by a
16 preponderance of the evidence, that an area covered by an application
17 does not meet the definition of unserved area.

18 (b) If all other application requirements remain met, an
19 application may be amended at any time to remove from the application
20 coverage of an area that does not meet the criteria established pursuant to
21 this section. Alternatively, the ~~board~~ OFFICE may award a partial grant for
22 an area that does meet the criteria.

23 (8.7) (a) NOTWITHSTANDING SUBSECTION (8)(a) OF THIS SECTION,
24 THE OFFICE, ON OR BEFORE SEPTEMBER 1, 2018, SHALL IMPLEMENT A
25 REVERSE AUCTION PROCESS FOR DISTRIBUTING BROADBAND DEPLOYMENT
26 GRANTS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. TO
27 EFFECTUATE THIS SUBSECTION (8), THE OFFICE MAY IMPOSE ADDITIONAL

1 OR DISTINCT REQUIREMENTS ON REVERSE AUCTION APPLICANTS AND ON
2 WINNING BIDDERS THAN THE REQUIREMENTS SET FORTH IN THIS SECTION.

3 (b) THE OFFICE SHALL PROVIDE AT LEAST THIRTY DAYS' NOTICE ON
4 ITS WEBSITE OF THE REVERSE AUCTION PROCESS BEFORE THE PROCESS IS
5 IMPLEMENTED AND SHALL PROVIDE LINKS TO ANY MAPS AND FORMS THAT
6 THE OFFICE DEVELOPS TO FACILITATE THE PROCESS.

7 (c) ANY APPLICATION RECEIVED BY THE OFFICE BEFORE THE
8 REVERSE AUCTION PROCESS IS IMPLEMENTED THAT IS STILL PENDING AT
9 THE TIME THAT THE REVERSE AUCTION PROCESS IS IMPLEMENTED SHALL
10 NOT BE DENIED SOLELY ON THE BASIS THAT THE APPLICATION DOES NOT
11 MEET THE REQUIREMENTS THE OFFICE ESTABLISHES FOR THE REVERSE
12 AUCTION PROCESS. RATHER, THE OFFICE MAY ASK THE APPLICANT TO
13 SUPPLEMENT THE APPLICANT'S APPLICATION IN ACCORDANCE WITH THE
14 REQUIREMENTS THE OFFICE ESTABLISHES FOR THE REVERSE AUCTION
15 PROCESS.

16 (9)(a) The ~~board~~ OFFICE shall report annually to the transportation
17 and energy committee and business affairs and labor committee in the
18 house of representatives and to the agriculture, natural resources, and
19 energy committee and business, labor, and technology committee in the
20 senate, or their successor committees, on the projects supported by money
21 from the HCSM account dedicated to broadband deployment in a given
22 year, including information on:

23 (I) The number of projects;

24 (II) The location of each project;

25 (III) The amount of funding received for each project; and

26 (IV) A description of each project.

27 (b) Notwithstanding section 24-1-136 (11), ~~C.R.S.~~, the report

1 required under this subsection (9) continues indefinitely.

2 (10) Local entities are encouraged to cooperate with respect to
3 time lines and permit fees concerning projects in their geographic area.

4 (10.5) (a) The ~~board~~ OFFICE may apply for federal funding of
5 broadband deployment projects and programs. The HCSM third-party
6 contractor shall maintain any federal money awarded for broadband
7 deployment in a separate account of the HCSM that is dedicated to
8 allocating federal broadband deployment money. The commission is
9 authorized to disburse any money from the account as directed by the
10 ~~board~~ OFFICE.

11 (b) (I) Following the model of New York's petition for expedited
12 waiver, the ~~board~~ OFFICE shall immediately petition the FCC for a waiver
13 from the auction rules that prohibit a state entity from applying for
14 connect America fund phase II auction money to allow the ~~board~~ OFFICE
15 itself to allocate auction money for broadband deployment projects
16 approved by the ~~board~~ OFFICE.

17 (II) After submitting the petition to the FCC, the ~~board~~ OFFICE
18 may:

19 (A) File any additional documentation that the FCC requires of the
20 ~~board~~ OFFICE in considering the ~~board's~~ OFFICE'S petition; and

21 (B) Coordinate with the FCC to develop any conditions that the
22 FCC might require to grant the petition.

23 (III) If the FCC grants the ~~board's~~ OFFICE'S petition and awards the
24 ~~board~~ OFFICE auction money:

25 (A) The HCSM third-party contractor shall maintain any federal
26 money awarded from the auction in the separate account of the HCSM
27 described in subsection (10.5)(a) of this section; and

1 (B) The commission is authorized to disburse the federal money
2 in that account for broadband deployment grants as directed by the board
3 OFFICE.

4 (IV) The board OFFICE may coordinate with the FCC to comply
5 with any conditions established by the FCC in granting the petition. If any
6 such FCC conditions impose project eligibility, application process,
7 award criteria, or other requirements that are distinct from the
8 requirements set forth in this section or established by the board OFFICE
9 pursuant to this section, the commission may, by rule and in consultation
10 with the board OFFICE, establish requirements that comply with the FCC's
11 conditions; except that any requirements established by the commission
12 by rule pursuant to this subsection (10.5)(b) must apply only to broadband
13 deployment projects that are eligible to receive auction money.

14 (c) ~~As used in this subsection (10.5):~~

15 (I) ~~"Auction rules" refers to the FCC's rules in 47 CFR 54.309 to~~
16 ~~54.316, which rules concern the implementation of the connect America~~
17 ~~fund phase II auction.~~

18 (II) ~~"Connect America fund phase II auction" or "auction" refers~~
19 ~~to a ten-year auction of federal money through which the FCC will~~
20 ~~allocate money, by means of a competitive bidding process, to~~
21 ~~telecommunications providers who commit to providing voice and~~
22 ~~broadband service in high-cost areas of the nation in accordance with the~~
23 ~~FCC's auction rules.~~

24 (III) ~~"New York's petition for expedited waiver" refers to a~~
25 ~~petition that the state of New York filed with the FCC seeking a waiver~~
26 ~~from the FCC's auction rules with regard to the rules' limitation~~
27 ~~prohibiting state entities from applying for federal money through the~~

1 auction. The FCC granted the waiver request on January 26, 2017, thus
2 authorizing the state of New York to directly receive and allocate auction
3 money to broadband projects within the state. <{***This subsection (10.5)***
4 ***incorporates language added by HB 1116. The definitions in subsection***
5 ***(10.5)(c) have been stricken here and added to the general definitions***
6 ***section - 24-48.5-402.***>

7 (10.6) (a) (I) Following the model of New York's petition for
8 expedited waiver, the ~~board~~ OFFICE, on or before January 1, 2019, shall
9 petition the FCC for a waiver from the FCC's rules concerning the remote
10 areas fund to seek FCC authorization for the ~~board~~ OFFICE to itself
11 allocate remote areas fund money for broadband deployment projects in
12 Colorado.

13 (II) After submitting the petition to the FCC, the ~~board~~ OFFICE
14 may:

15 (A) File any additional documentation that the FCC requires of the
16 ~~board~~ OFFICE in considering the ~~board's~~ OFFICE'S petition; and

17 (B) Coordinate with the FCC to develop any conditions that the
18 FCC might require to grant the petition.

19 (b) If the FCC denies the ~~board's~~ OFFICE'S petition, the ~~board~~
20 OFFICE shall not file a new petition or otherwise subsequently apply for
21 money from the remote areas fund.

22 (c) If the FCC grants the ~~board's~~ OFFICE'S petition:

23 (I) The HCSM third-party contractor shall maintain any federal
24 money awarded through the remote areas fund in a separate account of
25 the HCSM that is dedicated to allocating the federal money in compliance
26 with any conditions established by the FCC in granting the petition;

27 (II) The commission is authorized to disburse the federal money

1 in that account for broadband deployment grants as authorized by the
2 ~~board~~ OFFICE and in compliance with any conditions established by the
3 FCC in granting the petition; and

4 (III) The ~~board~~ OFFICE is authorized to coordinate with the FCC
5 to comply with any conditions established by the FCC in granting the
6 petition. If any such FCC conditions impose project eligibility,
7 application process, award criteria, or other requirements that are distinct
8 from the requirements set forth in this section or established by the ~~board~~
9 OFFICE pursuant to this section, the commission may, by rule and in
10 consultation with the ~~board~~ OFFICE, establish requirements that comply
11 with the FCC's conditions; except that any requirements established by
12 the commission by rule pursuant to this subsection (10.5) must apply only
13 to broadband deployment projects that are eligible to receive the federal
14 remote areas fund money.

15 (d) ~~As used in this subsection (10.5):~~

16 (I) ~~"Auction rules" refers to the FCC's rules in 47 CFR 54.309 to~~
17 ~~54.316, which rules concern the implementation of the connect America~~
18 ~~fund phase II auction.~~

19 (II) ~~"Connect America fund" refers to the federal universal service~~
20 ~~high-cost program that allows eligible telecommunications providers to~~
21 ~~recover some of their costs from the federal government for providing~~
22 ~~voice and broadband service in high-cost areas.~~

23 (III) ~~"Connect America phase II auction" refers to a ten-year~~
24 ~~auction of federal money through which the FCC will allocate money~~
25 ~~through a competitive bidding process to telecommunications providers~~
26 ~~who commit to providing voice and broadband service in high-cost areas~~
27 ~~of the nation in accordance with the FCC's auction rules.~~

1 ~~(IV) "New York's petition for expedited waiver" refers to a~~
2 ~~petition that the state of New York filed with the FCC seeking a waiver~~
3 ~~from the FCC's auction rules, which waiver the FCC granted on January~~
4 ~~26, 2017.~~

5 ~~(V) "Remote areas fund" refers to a fund created by the FCC as~~
6 ~~part of its connect America fund to facilitate broadband deployment in~~
7 ~~extremely high-cost areas of the nation. <{This subsection (10.6)~~
8 ~~incorporates language added by SB 104. The definitions in subsection~~
9 ~~(10.6)(d) have been stricken here and added to the general definitions~~
10 ~~section - 24-48.5-402.>~~

11 (10.7) ~~As used in this section:~~

12 (a) ~~"Incumbent broadband provider" means a provider that offers~~
13 ~~broadband internet service over a broadband network in an area covered~~
14 ~~by an application filed pursuant to this section.~~

15 (b) ~~"Overbuild" or "overbuilding" means providing a broadband~~
16 ~~network to a household or households that:~~

17 ~~(I) At the time of application, either have access to a broadband~~
18 ~~network or have received federal sources of high cost support or federal~~
19 ~~broadband grants to provide access to a broadband network; and~~

20 ~~(II) Account for twenty percent or more of the total household or~~
21 ~~households to be served by a proposed wireless project. <{These~~
22 ~~definitions were added by amendment in SB 002. I've moved them to~~
23 ~~the definition section being added in this bill - section 24-48.5-402 - to~~
24 ~~be with the other definitions that apply to this new part 4.>~~

25 (10.9) The board OFFICE shall make every effort to ensure that a
26 project funded pursuant to this section does not overbuild any project
27 supported or approved by the department of local affairs.

1 (11) This section is repealed, effective September 1, 2024. Before
2 its repeal, the powers, duties, and functions of the ~~board~~ OFFICE regarding
3 the deployment of broadband services into unserved areas are scheduled
4 for review in accordance with section 24-34-104.

5 **SECTION 5.** In Colorado Revised Statutes, 40-15-102, **amend**
6 the introductory portion; and **repeal as amended by Senate Bill 18-002**
7 (6.7), (17.5), and (32) as follows:

8 **40-15-102. Definitions.** As used in this ~~article~~ ARTICLE 15, unless
9 the context otherwise requires:

10 (6.7) ~~"Eligible applicant" means an applicant seeking grant~~
11 ~~funding for a proposed broadband project under section 40-15-509.5 with~~
12 ~~a sufficient business track record to indicate that the applicant's~~
13 ~~operations will be sustainable after receiving infrastructure support under~~
14 ~~section 40-15-509.5. The term is limited to for-profit entities; except that~~
15 ~~a nonprofit telephone cooperative, including its affiliates and subsidiaries,~~
16 ~~or a nonprofit rural electric association that existed on May 10, 2014,~~
17 ~~qualifies as an "eligible applicant".~~~~02~~~~he term is not limited to a current~~
18 ~~recipient of high cost support mechanism funds.~~

19 (17.5) ~~"Local entity" means elected members of a county~~
20 ~~government, municipal government, school district, or board of~~
21 ~~cooperative educational services in an unserved area.~~

22 (32) (a) ~~"Unserved area" means an area of the state that:~~

23 ~~(I) Lies outside of municipal boundaries or is a city with a~~
24 ~~population of fewer than seven thousand five hundred inhabitants; and~~

25 ~~(II) Consists of households that lack access to at least one~~
26 ~~provider of a broadband network that uses satellite technology and at least~~
27 ~~one provider of a broadband network that uses nonsatellite technology.~~

1 ~~(b) "Unserved area" also means any portion of a state or interstate~~
2 ~~highway corridor that lacks access to a provider of a broadband network.~~

3 **SECTION 6.** In Colorado Revised Statutes, 40-15-208, **amend**
4 **as amended by Senate Bill 18-002** (2)(a)(I)(B) as follows:

5 **40-15-208. High cost support mechanism - Colorado high cost**
6 **administration fund - broadband support mechanism - creation -**
7 **purpose - operation - rules - report - repeal.** (2) (a) (I) The
8 commission is hereby authorized to establish a mechanism for the support
9 of universal service, also referred to in this section as the "high cost
10 support mechanism", which must operate in accordance with rules
11 adopted by the commission. The primary purpose of the high cost support
12 mechanism is to provide financial assistance as a support mechanism to:

13 (B) Provide access to broadband service in unserved areas
14 pursuant to this section and section ~~40-15-509.5~~ **24-48.5-403** only.

15 **SECTION 7.** In Colorado Revised Statutes, 40-15-502, **amend**
16 **as amended by Senate Bill 18-002** (5)(a) as follows:

17 **40-15-502. Expressions of state policy.** (5) **Universal service**
18 **support mechanisms.** (a) In order to accomplish the goals of universal
19 basic service, universal access to advanced service under section
20 ~~40-15-509.5~~ **24-48.5-403**, and any revision of the definition of basic
21 service under subsection (2) of this section, the commission shall create
22 a system of support mechanisms to assist in the provision of basic service
23 and advanced service in high-cost areas. The commission shall fund these
24 support mechanisms equitably and on a nondiscriminatory, competitively
25 neutral basis through assessments, which may include a rate element, on
26 all telecommunications providers in Colorado. A provider's eligibility to
27 receive support for basic service under the support mechanisms is

1 conditioned upon the provider's offering basic service throughout an
2 entire support area.

3 **SECTION 8. Appropriation.** For the 2018-19 state fiscal year,
4 \$8,000,000 is appropriated to the Colorado office of economic
5 development in the office of the governor. This appropriation is from the
6 general fund. To implement this act, the Colorado office of economic
7 development may use this appropriation for the purpose of making
8 broadband deployment grant awards.

9 **SECTION 9. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REDRAFT

4.3.18

Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 18-1068.01 Jerry Barry x4341

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Evidence-based Review Of State Programs"

A BILL FOR AN ACT

101 **CONCERNING EVIDENCE-BASED REVIEW OF STATE PROGRAMS BY A**
102 **LABORATORY AT AN INSTITUTION OF HIGHER EDUCATION, AND,**
103 **IN CONNECTION THEREWITH, MAKING AND REDUCING**
104 **APPROPRIATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Budget Committee. The bill authorizes the legislative council to enter into a contract with a qualified laboratory at an institution of higher education (laboratory) in the state to perform evidence-based

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

performance analyses and evaluations (evaluations) on state programs. The laboratory shall first establish definitions to be used in its evaluations.

The bill:

- Authorizes a member of the general assembly to request that an evaluation of a state program be conducted by the laboratory;
- Directs the laboratory to provide an estimate of the costs of each requested evaluation;
- Authorizes the legislative council to prioritize and approve requests for evaluations subject to available appropriations;
- Subject to available appropriations, authorizes the executive committee of the legislative council to approve requests for evaluations while the general assembly is not in session;
- Directs that time frames for requests are to be established in the joint rules of the senate and the house of representatives;
- Repeals the evidence-based practices implementation for capacity program in the division of criminal justice in the department of public safety; and
- Makes and reduces appropriations.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 20 to article
3 2 of title 2 as follows:

4 **PART 20**

5 **EVIDENCE-BASED PERFORMANCE**

6 **ANALYSIS OR EVALUATION**

7 **2-2-2001. Performance analysis and evaluation - contract -**
8 **definitions.** (1) ON OR BEFORE SEPTEMBER 1, 2018, THE LEGISLATIVE
9 COUNCIL SHALL ENTER INTO A CONTRACT WITH A QUALIFIED LABORATORY
10 IN AN INSTITUTION OF HIGHER EDUCATION WITHIN THE STATE, REFERRED
11 TO IN THIS PART 20 AS THE "LABORATORY", TO PERFORM EVIDENCE-BASED
12 PERFORMANCE ANALYSES AND EVALUATIONS OF STATE PROGRAMS USING
13 DEFINITIONS ESTABLISHED IN ACCORDANCE WITH SUBSECTION (2) OF THIS

1 SECTION.

2 (2) (a) ON OR BEFORE JANUARY 1, 2019, THE LABORATORY SHALL
3 NOTIFY THE LEGISLATIVE COUNCIL AND THE JOINT BUDGET COMMITTEE OF
4 THE DEFINITIONS TO BE USED WHEN PERFORMING AN ANALYSIS OR
5 EVALUATION. THE DEFINITIONS MUST INCLUDE DEFINITIONS FOR:

- 6 (I) EVIDENCE-BASED;
7 (II) RANDOMIZED CONTROL;
8 (III) QUASI-EXPERIMENTAL; AND
9 (IV) PROMISING PRACTICE.

10 (b) NO LATER THAN JANUARY 31, 2019, THE LABORATORY SHALL
11 APPEAR BEFORE THE JOINT BUDGET COMMITTEE TO DESCRIBE THE
12 PROCESSES THAT IT WILL USE TO CONDUCT ANALYSES AND EVALUATIONS
13 AND DISCUSS ITS DEFINITIONS.

14 **2-2-2002. Requests for performance analysis or evaluation.**

15 (1) STARTING WITH THE 2019 REGULAR SESSION OF THE GENERAL
16 ASSEMBLY, NO LATER THAN A DAY CERTAIN OF A REGULAR LEGISLATIVE
17 SESSION AS ESTABLISHED IN THE JOINT RULES OF THE SENATE AND HOUSE
18 OF REPRESENTATIVES, A LEGISLATIVE MEMBER MAY SUBMIT A REQUEST IN
19 WRITING TO THE LEGISLATIVE COUNCIL CREATED IN SECTION 2-3-301 (1)
20 REGARDING THE STATE PROGRAM FOR WHICH HE OR SHE WISHES TO HAVE
21 THE LABORATORY PERFORM AN EVIDENCE-BASED PERFORMANCE
22 ANALYSIS OR EVALUATION DURING THE NEXT INTERIM BETWEEN SESSIONS.
23 AT MINIMUM, THE REQUEST MUST SPECIFY:

- 24 (a) THE STATE PROGRAM TO BE ANALYZED OR EVALUATED;
25 (b) WHETHER THE PROGRAM IS SUBJECT TO A REVIEW BY THE
26 DEPARTMENT OF REGULATORY AGENCIES PURSUANT TO SECTION 2-3-1203
27 OR 24-34-104 AND, IF SO, WHEN THE LAST REVIEW WAS CONDUCTED AND

1 WHEN THE NEXT REVIEW IS SCHEDULED;

2 (c) THE PURPOSE OF THE ANALYSIS AND WHY IT IS APPROPRIATE TO
3 CONDUCT THE ANALYSIS OR EVALUATION AT THIS TIME; AND

4 (d) WHEN THE ANALYSIS SHOULD BE COMPLETED AND WHICH
5 COMMITTEES OF REFERENCE SHOULD BE NOTIFIED OF THE RESULTS.

6 (2) THE LEGISLATIVE COUNCIL STAFF SHALL FORWARD COPIES OF
7 THE REQUESTS TO THE LABORATORY FOR AN ESTIMATE OF THE COSTS OF
8 THE ANALYSIS OR EVALUATION. THE LABORATORY SHALL PROVIDE
9 ESTIMATES OF THE COSTS OF EACH REQUEST SUBMITTED PURSUANT TO
10 SUBSECTION (1) OF THIS SECTION BY A DATE ESTABLISHED IN THE JOINT
11 RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.

12 (3) NO LATER THAN A DAY CERTAIN OF A REGULAR LEGISLATIVE
13 SESSION AS ESTABLISHED IN THE JOINT RULES OF THE SENATE AND HOUSE
14 OF REPRESENTATIVES, THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE
15 COUNCIL SHALL DETERMINE THE AMOUNT OF MONEY AVAILABLE WITHIN
16 THE LEGISLATIVE BUDGET FOR ANALYSES AND EVALUATIONS BY THE
17 LABORATORY AND SHALL PROVIDE THAT INFORMATION TO THE EXECUTIVE
18 COMMITTEE OF THE LEGISLATIVE COUNCIL.

19 (4) (a) NO LATER THAN A DAY CERTAIN OF A REGULAR
20 LEGISLATIVE SESSION AS ESTABLISHED IN THE JOINT RULES OF THE SENATE
21 AND HOUSE OF REPRESENTATIVES, THE LEGISLATIVE COUNCIL SHALL MEET
22 TO REVIEW AND PRIORITIZE REQUESTS MADE BY LEGISLATIVE MEMBERS
23 PURSUANT TO SUBSECTION (1) OF THIS SECTION. SUCH REVIEW AND
24 PRIORITIZATION MUST TAKE INTO ACCOUNT THE INFORMATION PROVIDED
25 BY THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL AS
26 SPECIFIED IN SUBSECTION (2) OF THIS SECTION. THE LEGISLATIVE COUNCIL
27 SHALL ALSO DETERMINE IF ANY OF THE PRIORITIZED REQUESTS WARRANT

1 CONTRACTING WITH THE LABORATORY, AND, IF SO, THE LEGISLATIVE
2 COUNCIL STAFF SHALL ENTER INTO A CONTRACT WITH THE LABORATORY
3 FOR THE ANALYSIS OR EVALUATION.

4 (b) AFTER THE GENERAL ASSEMBLY HAS ADJOURNED, IF A REQUEST
5 FOR AN EVIDENCE-BASED PERFORMANCE ANALYSIS OR EVALUATION IS
6 BROUGHT TO THE ATTENTION OF THE EXECUTIVE COMMITTEE OF THE
7 LEGISLATIVE COUNCIL AND THE EXECUTIVE COMMITTEE DETERMINES THAT
8 THE REQUEST IS THE RESULT OF CHANGED CIRCUMSTANCES OR NEW
9 CIRCUMSTANCES AND IS APPROPRIATE MATERIAL FOR AN ANALYSIS OR
10 EVALUATION TO BEGIN PRIOR TO THE NEXT INTERIM BETWEEN
11 LEGISLATIVE SESSIONS AND, IF THERE IS SUFFICIENT MONEY AVAILABLE
12 FOR THE ANALYSIS OR EVALUATION, THEN THE EXECUTIVE COMMITTEE OF
13 THE LEGISLATIVE COUNCIL MAY AUTHORIZE A CONTRACT WITH THE
14 LABORATORY FOR THE ANALYSIS OR EVALUATION BY ADOPTING A
15 RESOLUTION.

16 **SECTION 2.** In Colorado Revised Statutes, **repeal** 24-33.5-514.

17

18 **SECTION 3.** In Colorado Revised Statutes, 2-3-1203, **repeal**
19 (14)(a)(II) as follows:

20 **2-3-1203. Sunset review of advisory committees - legislative**
21 **declaration - definition - repeal.** (14) (a) The following statutory
22 authorizations for the designated advisory committees are scheduled for
23 repeal on September 1, 2023:

24 (II) ~~The EPIC advisory board created in section 24-33.5-514 (2),~~
25 ~~C.R.S.,~~

26 **SECTION 4. Appropriation - adjustments to 2018 long bill.**

27 (1) To implement this act, the general fund appropriation made in the

1 annual general appropriation act for the 2018-19 state fiscal year to the
2 department of public safety for use by the division of criminal justice for
3 the capacity resource center is decreased by \$888,694, and the related
4 FTE is decreased by 9.0 FTE.

5 (2) For the 2018-19 state fiscal year, \$888,694 is appropriated to
6 the legislative department for use by the legislative council. This
7 appropriation is from the general fund. To implement this act, the
8 department may use this appropriation for contracts with an institution of
9 higher education to conduct research into evidence-based performance
10 analysis and evaluation of state programs.

11 **SECTION 5. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
4.10.18

DRAFT

LLS NO. 18-1049.03 Jane Ritter x4342

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Child Welfare Reforms"

A BILL FOR AN ACT

101 **CONCERNING REFORMS TO CHILD WELFARE SERVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Budget Committee. The bill addresses numerous reforms to the funding structure for the state's child welfare services.

Section 1 of the bill clarifies the types of child welfare services that must be available and provided, as necessary and appropriate, by county departments of human or social services (county departments).

Sections 2 and 7 of the bill eliminate the option for county departments to maintain unspent general fund money from the child welfare services block allocation if they participate in the collaborative

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

management program or the integrated care management program.

Section 3 of the bill adds a statutory definition of and citation to the federal "Family First Prevention Services Act of 2018".

Section 4 of the bill creates a program in the child welfare system for residential out-of-home placements for children and youth with intellectual and developmental disabilities.

Section 5 of the bill:

- Changes the number of and process for appointments to the child welfare allocations committee; and
- Requires the development of a child welfare system funding model.

Section 6 of the bill:

- Increases the percentage that counties are reimbursed by the state for adoption and relative guardianship subsidies from 80% to 90%;
- Formalizes the input process of the child welfare allocations committee;
- Allows the department of human services (state department) to submit supplemental budget requests for increases in out-of-home placement provider rates and adoption and relative guardianship expenditures;
- Modifies language concerning negotiations between county departments and providers for out-of-home placement rates;
- Requires capacity evaluations in counties or regions;
- Requires the state department to perform an analysis and cost projections to determine the fiscal impact on the state for changes in federal reimbursement rates for child welfare expenditures that result from the federal "Family First Prevention Services Act of 2018";
- Modifies the close-out process for child welfare expenditures; and
- Creates a child welfare prevention and intervention services cash fund into which unspent general fund money allocated to county departments through block allocations are transferred for sustainability of state-approved prevention and intervention programs and services.

Section 8 of the bill creates the delivery of child welfare services task force.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 19-3-208, **amend**

1 (2)(b) introductory portion and (2)(b)(I) as follows:

2 **19-3-208. Services - county required to provide - rules.**

3 (2) (b) The following services ~~shall~~ MUST be available and provided, as
4 determined necessary and appropriate by individual case plans,
5 commencing on or after July 1, 1993:

6 (I) Screening, assessments, INCLUDING THOSE REQUIRED BY THE
7 FEDERAL "FAMILY FIRST PREVENTION SERVICES ACT OF 2018", TITLES
8 IV-B AND IV-E OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED,
9 and individual case plans;

10 **SECTION 2.** In Colorado Revised Statutes, 24-1.9-102, **amend**
11 (2)(h) as follows:

12 **24-1.9-102. Memorandum of understanding - local-level**
13 **interagency oversight groups - individualized service and support**
14 **teams - coordination of services for children and families -**
15 **requirements - waiver. (2) (h) Reinvestment of money saved to serve**
16 **additional children and families. (†) The memorandum of**
17 **understanding shall** MUST require the interagency oversight group to
18 create a procedure, subject to approval by the head or director of each
19 agency or department specified in ~~paragraphs (a) and (a.5) of subsection~~
20 ~~(†) SUBSECTIONS (1)(a) AND (1)(a.5) of this section, to allow any moneys~~
21 ~~MONEY resulting from waivers granted by the federal government, and~~
22 ~~any state general fund savings realized as a result of the implementation~~
23 ~~of the collaborative system of management of multi-agency services~~
24 ~~provided to children and families related to the funding sources specified~~
25 ~~by the parties to the memorandum of understanding pursuant to paragraph~~
26 ~~(b) of this subsection (2) to be reinvested by the parties to the~~
27 ~~memorandum of understanding to provide appropriate services, as~~

1 ~~defined in paragraph (b) of this subsection (2)~~ ANY LOCAL FUNDS, AND
2 ANY STATE GENERAL FUND MONEY APPROPRIATED TO THE PROGRAM TO BE
3 USED TO PROVIDE SERVICES to children and families who would benefit
4 from integrated multi-agency services, as the population is defined by the
5 memorandum of understanding pursuant to ~~paragraph (c) of this~~
6 ~~subsection (2)~~ SUBSECTION (2)(c) OF THIS SECTION.

7 ~~(H) A county that has implemented a collaborative management~~
8 ~~process for services to children and families, which services are not~~
9 ~~included as services to be provided to children and families who would~~
10 ~~benefit from integrated multi-agency services in the memorandum of~~
11 ~~understanding pursuant to paragraph (b) of this subsection (2), and that~~
12 ~~underspends the general fund portion of its capped or targeted allocation~~
13 ~~may use the portion of general fund savings realized, as referenced in this~~
14 ~~section, of its underspent capped or targeted allocation for provision of~~
15 ~~existing services for such children and families in the county.~~

16 **SECTION 3.** In Colorado Revised Statutes, 26-5-101, **amend** the
17 introductory portion; and **add** (4.5) as follows:

18 **26-5-101. Definitions.** As used in this ~~article~~ ARTICLE 5, unless
19 the context otherwise requires:

20 (4.5) "FAMILY FIRST PREVENTION SERVICES ACT OF 2018" MEANS
21 TITLES IV-B AND IV-E OF THE FEDERAL "SOCIAL SECURITY ACT", AS
22 AMENDED.

23 **SECTION 4.** In Colorado Revised Statutes, 26-5-102, **add** (3) as
24 follows:

25 **26-5-102. Provision of child welfare services - system reform**
26 **goals - out-of-home placements for children with intellectual and**
27 **developmental disabilities - rules - definition.** (3) (a) ON OR BEFORE

1 AUGUST 1, 2018, THE STATE DEPARTMENT SHALL DEVELOP A PROGRAM TO
2 SERVE CHILDREN AND YOUTH WITH INTELLECTUAL AND DEVELOPMENTAL
3 DISABILITIES WHO ARE PLACED BY COUNTY DEPARTMENTS OF HUMAN OR
4 SOCIAL SERVICES IN A LICENSED OUT-OF-HOME SETTING AS DEFINED IN
5 SECTION 26-6-102 (33).

6 (b) THE STATE DEPARTMENT SHALL PROMULGATE RULES
7 CONCERNING THE PLACEMENT OF CHILDREN OR YOUTH IN THE PROGRAM.
8 THE RULES MUST INCLUDE, BUT NEED NOT BE LIMITED TO, QUALITY
9 ASSURANCE MONITORING, ADMISSIONS, DISCHARGE PLANNING, AND
10 APPROPRIATE LENGTH OF STAY.

11 (c) ON OR BEFORE DECEMBER 31, 2018, THE STATE DEPARTMENT
12 SHALL CONTRACT WITH A LICENSED PROVIDER FOR THE DELIVERY OF
13 SERVICES TO CHILDREN AND YOUTH WITH INTELLECTUAL AND
14 DEVELOPMENTAL DISABILITIES WHO ARE PLACED IN THE PROGRAM. THE
15 STATE DEPARTMENT SHALL UTILIZE A REQUEST FOR PROPOSAL PROCESS TO
16 DEFINE THE SCOPE OF THE CONTRACT AND TO SELECT THE LICENSED
17 PROVIDER.

18 (d) A COUNTY DEPARTMENT THAT WISHES TO PLACE A CHILD OR
19 YOUTH IN THE PROGRAM SHALL SUBMIT AN APPLICATION TO THE STATE
20 DEPARTMENT FOR REVIEW. THE STATE DEPARTMENT SHALL APPROVE
21 ADMISSIONS INTO THE PROGRAM AND DETERMINE DISCHARGE CRITERIA
22 FOR EACH PLACEMENT. A COUNTY DEPARTMENT THAT HAS APPLIED FOR
23 THE ADMISSION OF A CHILD OR YOUTH INTO THE PROGRAM SHALL BE
24 NOTIFIED IN WRITING OF A PLACEMENT APPROVED BY THE STATE
25 DEPARTMENT.

26 (e) FOR THE DURATION OF THE TREATMENT, AS DEFINED IN THE
27 APPROVAL LETTER FROM THE STATE DEPARTMENT, AND FOR THIRTY DAYS

1 AFTER THE COMPLETION OF TREATMENT, THE COUNTY DEPARTMENT
2 RESPONSIBLE FOR THE PLACEMENT OF THE CHILD OR YOUTH IN THE
3 PROGRAM MUST BE REIMBURSED BY THE STATE DEPARTMENT FOR ONE
4 HUNDRED PERCENT OF THE COSTS ASSOCIATED WITH THE APPROVED
5 PLACEMENT.

6 (f) THE STATE DEPARTMENT SHALL NOTIFY THE COUNTY
7 DEPARTMENT THAT IS RESPONSIBLE FOR THE PLACEMENT OF THE CHILD OR
8 YOUTH OF THE DATE ON WHICH THE REIMBURSEMENT ELIGIBILITY WILL
9 EXPIRE. UPON EXPIRATION OF THE REIMBURSEMENT ELIGIBILITY, IF THE
10 CHILD OR YOUTH REMAINS IN PLACEMENT AT THE FACILITY, THE COUNTY
11 DEPARTMENT IS RESPONSIBLE FOR ONE HUNDRED PERCENT OF THE
12 PLACEMENT COSTS.

13 (g) A COUNTY DEPARTMENT THAT HAS PLACED A CHILD IN THE
14 PROGRAM RETAINS THE RIGHT TO REMOVE THE CHILD OR YOUTH FROM THE
15 PROGRAM ANY TIME PRIOR TO THE DISCHARGE DATE SPECIFIED BY THE
16 STATE DEPARTMENT.

17 (h) THE STATE DEPARTMENT SHALL REIMBURSE THE PROVIDER ONE
18 HUNDRED PERCENT OF THE COST OF UNUTILIZED BEDS IN THE PROGRAM TO
19 ENSURE AVAILABLE SPACE FOR EMERGENCY RESIDENTIAL OUT-OF-HOME
20 PLACEMENTS.

21 (i) ENTITIES OTHER THAN COUNTY DEPARTMENTS, INCLUDING BUT
22 NOT LIMITED TO HOSPITALS, HEALTH CARE PROVIDERS, SINGLE ENTRY
23 POINT AGENCIES, AND COMMUNITY-CENTERED BOARDS, MAY APPLY TO
24 THE STATE DEPARTMENT FOR ADMISSION OF A CHILD OR YOUTH WITH
25 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES INTO THE PROGRAM
26 PURSUANT TO THIS SUBSECTION (3). SUCH APPLICATIONS WILL BE
27 CONSIDERED IF SPACE IS AVAILABLE. HOWEVER, CHILDREN AND YOUTH

1 WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES PLACED BY
2 COUNTY DEPARTMENTS HAVE PRIORITY. THE STATE DEPARTMENT SHALL
3 NOT ACCEPT APPLICATIONS FOR PLACEMENT OF A CHILD OR YOUTH WHO
4 IS EXCLUSIVELY INSURED BY PRIVATE INSURANCE. A CHILD OR YOUTH
5 WHO IS DUALY INSURED BY PRIVATE INSURANCE AND MEDICAID AND
6 WHOSE RESIDENTIAL LEVEL OF CARE HAS BEEN DENIED BY PRIVATE
7 INSURANCE MAY BE ELIGIBLE FOR SERVICES IN THE PROGRAM.

8 (j) ANY ENTITY DEFINED IN SUBSECTION (3)(i) OF THIS SECTION
9 THAT RECEIVES PLACEMENT APPROVAL FROM THE STATE DEPARTMENT
10 SHALL CONTRACT DIRECTLY WITH THE PROVIDER FOR SUCH PLACEMENT
11 AND IS RESPONSIBLE FOR THE COSTS ASSOCIATED WITH THE PLACEMENT.

12 (4) AS USED IN THIS SECTION, "COUNTY DEPARTMENT" MEANS A
13 COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES.

14 **SECTION 5.** In Colorado Revised Statutes, **amend** 26-5-103.5
15 as follows:

16 **26-5-103.5. Child welfare allocations committee - organization**
17 **- advisory duties - funding model - allocations model - definitions.**

18 (1) THE STATE DEPARTMENT SHALL CONVENE a child welfare allocations
19 committee, ~~shall be convened by the state department~~ REFERRED TO IN
20 THIS SECTION AS THE "COMMITTEE", as necessary in order to make
21 advisory recommendations as described in this ~~article~~ ARTICLE 5.

22 (2) (a) ~~The child welfare allocations committee shall consist of~~
23 ~~eleven members, eight of whom shall be appointed by a statewide~~
24 ~~association of counties and three of whom shall be appointed by the state~~
25 ~~department. Of the members appointed by the statewide association of~~
26 ~~counties, at least two members shall be from small or medium-sized~~
27 ~~counties, and at least three shall be from large counties. The appointing~~

1 ~~authorities shall consult with each other to ensure that the child welfare~~
2 ~~allocations committee is representative of the counties in the state. A~~
3 ~~representative from the county that has the greatest percentage of the~~
4 ~~state's child welfare caseload will automatically be appointed, which~~
5 ~~appointment shall be credited against the eight appointments allocated to~~
6 ~~the statewide association of counties~~ THE COMMITTEE CONSISTS OF
7 THIRTEEN MEMBERS, EIGHT OF WHOM MUST BE APPOINTED BY COUNTY
8 COMMISSIONERS AND FIVE OF WHOM MUST BE APPOINTED BY THE STATE
9 DEPARTMENT.

10 (b) OF THE MEMBERS APPOINTED BY THE STATE DEPARTMENT, AT
11 LEAST TWO MEMBERS MUST BE REPRESENTATIVES FROM THE TWO
12 COUNTIES IN THE STATE WITH THE GREATEST PERCENTAGE OF THE STATE'S
13 CHILD WELFARE CASELOAD.

14 (c) OF THE APPOINTMENTS MADE BY COUNTY COMMISSIONERS,
15 ONLY ONE REPRESENTATIVE PER COUNTY MAY SERVE ON THE COMMITTEE
16 AT THE SAME TIME, AND:

17 (I) ONE MUST BE APPOINTED BY THE COMMISSIONERS OF EACH OF
18 THE FOLLOWING REGIONS, AS THOSE REGIONS ARE DEFINED IN SUBSECTION
19 (2)(d) OF THIS SECTION:

- 20 (A) THE EASTERN REGION;
21 (B) THE FRONT RANGE REGION;
22 (C) THE MOUNTAIN REGION;
23 (D) THE SOUTHERN REGION; AND
24 (E) THE WESTERN REGION; AND

25 (II) THREE MUST BE AT-LARGE APPOINTMENTS. OF THE THREE
26 AT-LARGE APPOINTMENTS, TWO MUST APPOINTED BY THE COMMISSIONERS
27 OF THE COUNTIES DESCRIBED IN SECTION 26-5-104 (4)(b)(I), AND ONE

1 MUST BE APPOINTED BY THE COMMISSIONERS WHO REPRESENT THE
2 COUNTIES DESCRIBED IN SECTION 26-5-104 (4)(b)(II).

3 (d) FOR THE PURPOSES OF THIS SUBSECTION (2):

4 (I) THE EASTERN REGION IS COMPRISED OF CHEYENNE, ELBERT,
5 KIT CARSON, LINCOLN, LOGAN, MORGAN, PHILLIPS, SEDGWICK,
6 WASHINGTON, AND YUMA COUNTIES;

7 (II) THE FRONT RANGE REGION IS COMPRISED OF ADAMS,
8 ARAPAHOE, BOULDER, DOUGLAS, EL PASO, JEFFERSON, LARIMER, AND
9 WELD COUNTIES, AND THE CITY AND COUNTY OF BROOMFIELD AND THE
10 CITY AND COUNTY OF DENVER;

11 (III) THE MOUNTAIN REGION IS COMPRISED OF CHAFFEE, CLEAR
12 CREEK, CUSTER, EAGLE, FREMONT, GILPIN, GRAND, JACKSON, LAKE,
13 PARK, PITKIN, SUMMIT, AND TELLER COUNTIES;

14 (IV) THE SOUTHERN REGION IS COMPRISED OF ALAMOSA, BACA,
15 BENT, CONEJOS, COSTILLA, CROWLEY, HUERFANO, KIOWA, LAS ANIMAS,
16 MINERAL, OTERO, PROWERS, PUEBLO, RIO GRANDE, AND SAGUACHE
17 COUNTIES; AND

18 (V) THE WESTERN REGION IS COMPRISED OF ARCHULETA, DELTA,
19 DOLORES, GARFIELD, GUNNISON, HINSDALE, LA PLATA, MESA, MOFFAT,
20 MONTEZUMA, MONTROSE, OURAY, RIO BLANCO, ROUTT, SAN JUAN, AND
21 SAN MIGUEL COUNTIES.

22 (3) The ~~child welfare allocations~~ committee shall develop its own
23 operating procedures.

24 (4) No later than January 15, 1999, the state department, with
25 input from the ~~child welfare allocations~~ committee, shall make
26 recommendations to the joint budget committee of the general assembly
27 for a definition of what ~~shall constitute~~ CONSTITUTES administration and

1 support functions as referred to in section 26-5-101 (3)(m) and a method
2 for identifying costs for such functions.

3 ~~(5) Pursuant to section 26-5-104 (3), the child welfare allocations~~
4 ~~committee shall develop a formula to allocate additional funding to~~
5 ~~counties in addition to the child welfare block grant for the specific~~
6 ~~purpose of hiring new child welfare staff at the county level in addition~~
7 ~~to county child welfare staff existing as of January 1, 2015, pursuant to~~
8 ~~the requirements of section 26-5-104 (8). Counties shall continue to pay~~
9 ~~for child welfare staff positions existing as of January 1, 2015, through~~
10 ~~the child welfare block grant. The child welfare allocations committee~~
11 ~~shall modify the allocation formula as necessary in consideration of any~~
12 ~~findings from the child welfare caseload study performed pursuant to~~
13 ~~section 26-5-112 at such time as those findings are available.~~

14 ~~(6) On or before June 15, 2017, the child welfare allocations~~
15 ~~committee shall consider developing an allocations model based on the~~
16 ~~recommendations developed pursuant to section 26-5-104 (9). None of~~
17 ~~the provisions of Senate Bill 16-201, enacted in 2016, supersede or~~
18 ~~infringe on the statutory authority of the child welfare allocations~~
19 ~~committee.~~

20 (7) (a) BEGINNING WITH STATE FISCAL YEAR 2018-19, AND EVERY
21 THREE YEARS THEREAFTER, THE STATE DEPARTMENT SHALL CONTRACT
22 WITH AN OUTSIDE ENTITY TO DEVELOP A FUNDING MODEL THAT MUST BE
23 USED TO INFORM THE COMMITTEE, THE GENERAL ASSEMBLY, THE
24 GOVERNOR, AND THE STATE DEPARTMENT OF THE APPROPRIATE LEVEL OF
25 FUNDING REQUIRED TO FULLY MEET ALL STATE AND FEDERAL
26 REQUIREMENTS CONCERNING THE COMPREHENSIVE DELIVERY OF CHILD
27 WELFARE SERVICES, AS DEFINED IN SECTION 26-5-101 (3). THE FUNDING

1 MODEL MUST TAKE INTO CONSIDERATION WORKLOAD; DEMOGRAPHIC
2 DATA, INCLUDING POVERTY STATISTICS; AND STATE AND LOCAL ECONOMIC
3 DRIVERS THAT MAY INFLUENCE THE DELIVERY OF SERVICES. THE FUNDING
4 MODEL DEVELOPED PURSUANT TO THIS SUBSECTION (7) MUST BE
5 INFORMED BY THE RECOMMENDATIONS OF THE DELIVERY OF CHILD
6 WELFARE SERVICES TASK FORCE AS SET FORTH IN SECTION 26-5-105.8 AND
7 MUST BE USED TO INFORM THE DECISION-MAKING PROCESS OF THE
8 COMMITTEE.

9 (b) (I) ON OR BEFORE NOVEMBER 1, 2019, AND EACH NOVEMBER
10 1 THEREAFTER, THE STATE DEPARTMENT, IN COLLABORATION WITH THE
11 COMMITTEE, SHALL SUBMIT AN ANNUAL REPORT TO THE JOINT BUDGET
12 COMMITTEE, OR ANY SUCCESSOR COMMITTEE. THE REPORT MUST INCLUDE
13 THE RESULTS OF REGULAR EVALUATIONS OF THE FUNDING MODEL
14 DEVELOPED PURSUANT TO SUBSECTION (7)(a) OF THIS SECTION, THE
15 ALLOCATION FORMULAS DEVELOPED PURSUANT TO SECTION 26-5-104(3),
16 AND OUTCOMES AND PERFORMANCE MEASURES RELATED TO THE
17 DELIVERY OF CHILD WELFARE SERVICES, PURSUANT TO SECTION
18 26-5-105.8.

19 (II) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE
20 REPORTING REQUIREMENT IN SUBSECTION (7)(b)(I) OF THIS SECTION
21 CONTINUES INDEFINITELY.

22 **SECTION 6.** In Colorado Revised Statutes, 26-5-104, **amend** (1),
23 (3)(a), (3)(b), (3)(c), (4)(d), (6)(a), (6)(b), (6)(d), (6)(g), and (7); **repeal**
24 (9); and **add** (3)(a.5), (3)(a.6), (4)(d.5), (4)(f), and (6.6) as follows:

25 **26-5-104. Funding of child welfare services - rules - report -**
26 **provider contracts - funding mechanism review - fund - definitions**
27 **- rules - repeal.** (1) **Reimbursement.** (a) EXCEPT AS PROVIDED IN

1 SUBSECTION (1)(b) OF THIS SECTION, the state department shall, within the
2 limits of available appropriations, reimburse the county departments
3 eighty percent of amounts expended by county departments for child
4 welfare services, up to the amount of the county's allocation as
5 determined pursuant to the provisions of this section, except as otherwise
6 authorized in accordance with the close-out process described in
7 subsection (7) of this section.

8 (b) THE STATE DEPARTMENT SHALL REIMBURSE THE COUNTY
9 DEPARTMENTS NINETY PERCENT OF THE AMOUNTS EXPENDED BY COUNTY
10 DEPARTMENTS FOR ADOPTION AND RELATIVE GUARDIANSHIP ASSISTANCE.
11 THE ADOPTION AND RELATIVE GUARDIANSHIP ASSISTANCE IS EXEMPT
12 FROM THE CLOSE-OUT PROCESS DESCRIBED IN SUBSECTION (7) OF THIS
13 SECTION AND THE CAPPED ALLOCATION DESCRIBED IN SUBSECTION (3) OF
14 THIS SECTION.

15 (3) **Allocation formula.** (a) For state fiscal year ~~1997-98~~
16 2018-19, and for each state fiscal year thereafter, the state department,
17 after input from the child welfare allocations committee, shall develop
18 formulas for capped and targeted allocations, ~~that must include,~~
19 INCLUDING THE CHILD WELFARE SERVICES ALLOCATION, THE ALLOCATION
20 FOR ADDITIONAL COUNTY CHILD WELFARE STAFF, AND THE ALLOCATION
21 FOR FAMILY AND CHILDREN'S PROGRAMS. ALLOCATION FORMULAS
22 DEVELOPED PURSUANT TO THIS SUBSECTION (3)(a) MUST INCLUDE,
23 effective for state fiscal year ~~1998-99~~ 2018-19 AND EACH STATE FISCAL
24 YEAR THEREAFTER, the estimated caseload for the delivery of those
25 specific child welfare services to be funded by the money in the capped
26 or targeted allocations. THE FORMULAS MUST ALSO INCLUDE A
27 PERFORMANCE-ALIGNED COMPONENT THAT SUPPORTS THE

1 IMPLEMENTATION OF PROMISING, SUPPORTED, OR WELL-SUPPORTED
2 PRACTICES, AS DEFINED IN THE FEDERAL "FAMILY FIRST PREVENTION
3 SERVICES ACT OF 2018", AS DEFINED IN SECTION 26-5-101 (4.5); BE
4 OUTCOME-DRIVEN; AND BE ALIGNED WITH DESIRED STATE
5 DEPARTMENT-DEFINED OR FEDERALLY REQUIRED OUTCOMES AND GOALS.
6 THE ALLOCATION TO EACH COUNTY FROM ANY GIVEN FORMULA MUST BE
7 EQUITABLE AND REFLECTIVE OF THE COST OF DELIVERING SERVICES. If a
8 county receives more than one capped or targeted allocation for the
9 delivery of child welfare services, the formula must identify the specific
10 caseload estimate attributable to each capped or targeted allocation. ~~The~~
11 ~~determination of the formulas pursuant to the provisions of this~~
12 ~~subsection (3) must also take into consideration factors that directly affect~~
13 ~~the population of children in need of child welfare services, as determined~~
14 ~~by the state department and the child welfare allocations committee.~~

15 (a.5) PURSUANT TO THIS SUBSECTION (3), A COUNTY THAT
16 RECEIVES AN ALLOCATION FOR COUNTY CHILD WELFARE STAFF IN
17 ADDITION TO THE CHILD WELFARE SERVICES ALLOCATION SHALL FUND
18 EXISTING STAFF POSITIONS AS OF JANUARY 1, 2015, THROUGH THE CHILD
19 WELFARE SERVICES ALLOCATION. POSITIONS CREATED AFTER JANUARY 1,
20 2015, MAY BE FUNDED THROUGH THE ALLOCATION FOR COUNTY CHILD
21 WELFARE STAFF.

22 (a.6) ON OR BEFORE MARCH 1 OF ANY STATE FISCAL YEAR, THE
23 CHILD WELFARE ALLOCATIONS COMMITTEE SHALL SUBMIT WRITTEN
24 RECOMMENDATIONS TO THE STATE DEPARTMENT TO INFORM THE CAPPED
25 AND TARGETED ALLOCATIONS. THE CHILD WELFARE ALLOCATIONS
26 COMMITTEE IS ENCOURAGED TO INCLUDE DOCUMENTATION ON HOW THE
27 RECOMMENDATIONS SUPPORT THE ACHIEVEMENT OF EXPECTATIONS

1 DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION.

2 (b) In the event that the state department and the child welfare
3 allocations committee do not reach an agreement on the allocation
4 formula on or before ~~June 15~~ JUNE 1 of any state fiscal year for the
5 succeeding state fiscal year, the state department and the child welfare
6 allocations committee shall submit alternatives to the joint budget
7 committee of the general assembly from which such joint budget
8 committee shall select an allocation formula before the beginning of such
9 succeeding state fiscal year.

10 (c) The formulas developed ~~by the state department, after input~~
11 ~~from the child welfare allocations committee, shall~~ PURSUANT TO THIS
12 SUBSECTION (3) MUST identify the portion of the amounts appropriated for
13 child welfare services that ~~shall~~ MUST be allocated to the counties for the
14 provision of child welfare services.

15 (4) **Allocations.** (d) EXCEPT AS PROVIDED FOR IN SUBSECTIONS
16 (4)(e) AND (4)(f) OF THIS SECTION, the state department may only seek
17 additional funding from the general assembly in a supplemental
18 appropriations bill based upon caseload growth, subject to the provisions
19 of subsection (7) of this section, or changes in federal law or federal
20 funding. ~~For fiscal years 2006-07 and 2007-08, the state department may~~
21 ~~seek supplemental funding related to the implementation of the placement~~
22 ~~of children in a residential child health care program as specified in~~
23 ~~section 25.5-5-306, C.R.S.~~

24 (d.5) (I) FOR FISCAL YEARS 2018-19 THROUGH 2023-24, IN
25 ADDITION TO FUNDING RECEIVED PURSUANT TO SUBSECTION (4)(d) OF THIS
26 SECTION, THE STATE DEPARTMENT MAY SEEK ADDITIONAL FUNDING FROM
27 THE GENERAL ASSEMBLY IN A SUPPLEMENTAL BILL RELATED TO THE

1 IMPLEMENTATION OF SUBSECTION (6) OF THIS SECTION, AND SUBJECT TO
2 THE PROVISIONS OF SUBSECTION (7) OF THIS SECTION OR CHANGES IN
3 FEDERAL LAW OR FEDERAL FUNDING.

4 (II) THIS SUBSECTION (4)(d.5) IS REPEALED, EFFECTIVE JULY 1,
5 2024.

6 (f) IN ADDITION TO FUNDING RECEIVED PURSUANT TO SUBSECTION
7 (4)(d) OF THIS SECTION, THE STATE DEPARTMENT MAY SUBMIT A REQUEST
8 TO THE GENERAL ASSEMBLY FOR A CHANGE IN A SUPPLEMENTAL
9 APPROPRIATIONS BILL TO THE APPROPRIATION THAT FUNDS ADOPTION AND
10 RELATIVE GUARDIANSHIP ASSISTANCE EXPENDITURES.

11 (6) **County negotiations with providers.** (a) Subject to rules
12 promulgated by the state department pursuant to subsection (6)(b) of this
13 section AND THE METHODOLOGY ADOPTED PURSUANT TO SUBSECTIONS
14 (6)(e) TO (6)(h) OF THIS SECTION, FOR EACH CHILD PLACED IN AN
15 OUT-OF-HOME PLACEMENT SETTING, a county is authorized to negotiate
16 rates RELATED TO services and outcomes with licensed out-of-home
17 placement providers; ~~if the county has~~ EXCEPT THAT A COUNTY MAY NOT
18 NEGOTIATE RATES FOR THE COST OF CHILD MAINTENANCE PAYMENTS FOR
19 SUCH PLACEMENTS BELOW THE BASE ANCHOR RATES ESTABLISHED BY THE
20 STATE DEPARTMENT. COUNTIES WITH AN APPROVED ALTERNATIVE
21 METHODOLOGY SHALL USE a request for proposal process ~~in effect for~~
22 ~~soliciting~~ TO SOLICIT bids from licensed out-of-home placement providers
23 ~~or another mechanism for evaluating the rates, services, and outcomes~~
24 ~~that it is negotiating with such licensed out-of-home placement providers~~
25 ~~that is acceptable to the state department~~ THAT ALLOWS FOR ADEQUATE
26 PRIVATE COMPETITION AND PROVIDES OPPORTUNITIES FOR COMPETITIVE
27 NEGOTIATIONS.

1 (b) On or before ~~January 1, 2008~~ JANUARY 1, 2019, and as
2 necessary thereafter, the state department shall WORK COLLABORATIVELY
3 WITH THE STATE BOARD OF HUMAN SERVICES TO promulgate rules
4 governing the methodology by which counties may negotiate rates,
5 services, and outcomes with licensed out-of-home placement providers.
6 IF A COUNTY NEGOTIATES A CONTRACT WITH A LICENSED OUT-OF-HOME
7 PLACEMENT PROVIDER, THE COUNTY MAY DEFINE THE EXPECTED
8 OUTCOMES AND INCLUDE OPTIONS FOR THE PAYMENT OF INCENTIVES TO
9 PROVIDERS WHEN SUCH OUTCOMES ARE ACHIEVED. THE STATE
10 DEPARTMENT SHALL WORK COLLABORATIVELY WITH THE STATE BOARD OF
11 HUMAN SERVICES TO PROMULGATE RULES CONCERNING SUCH OUTCOMES
12 AND INCENTIVE PAYMENTS.

13 (d) ~~By July 1, 2008, and by July 1 of each even-numbered year~~ ON
14 OR BEFORE JULY 1, 2019, AND EACH JULY 1 thereafter, the state
15 department shall complete a review of the methodology by which
16 counties evaluate and negotiate rates, services, ~~and~~ outcomes, AND
17 INCENTIVES with licensed out-of-home placement providers DEVELOPED
18 PURSUANT TO THIS SUBSECTION (6) AND ANY ALTERNATIVE
19 METHODOLOGY FOR WHICH COUNTIES HAVE APPROVAL FROM THE STATE
20 DEPARTMENT TO UTILIZE. The methodology used is governed by rules
21 promulgated by the state department pursuant to subsection (6)(b) of this
22 section. In preparing for and conducting the review, the state department
23 shall convene a group of persons representing the directors of county
24 departments of human or social services and the licensed out-of-home
25 placement provider community. On or before September 1 of each fiscal
26 year, the group shall submit a report to the joint budget committee
27 detailing any changes to the rate-setting methodology that results from the

1 review conducted pursuant to this subsection (6)(d).

2 (g) SUBJECT TO AVAILABLE APPROPRIATIONS, the methodology
3 must be implemented on or before July 1, 2018, except for those rates that
4 must be approved by CMS. Rates that must be approved by CMS must be
5 implemented upon approval. In the event that the representatives
6 identified in subsection (6)(e) of this section do not agree on the
7 rate-setting methodology on or before February 1, 2018, the state
8 department, the county representatives, and the licensed out-of-home
9 placement providers shall submit alternatives to the joint budget
10 committee. The joint budget committee shall then select a methodology
11 prior to the start of the succeeding state fiscal year. IT IS THE INTENT OF
12 THE GENERAL ASSEMBLY THAT THE RATE METHODOLOGY DEVELOPED
13 PURSUANT TO THIS SUBSECTION (6) BE FULLY IMPLEMENTED ON OR BEFORE
14 JUNE 30, 2022, THROUGH INCREMENTAL RATE INCREASES ESTABLISHED BY
15 THE STATE DEPARTMENT. FOR FISCAL YEAR 2019-20 THROUGH FISCAL
16 YEAR 2021-22, THE STATE DEPARTMENT IS ENCOURAGED TO SUBMIT, AS
17 A PART OF THE ANNUAL BUDGET PROCESS, A REQUEST FOR INCREASED
18 APPROPRIATIONS TO FUND THE INCREASED RATES REQUIRED BY THE
19 METHODOLOGY.

20 (6.6) (a) EACH COUNTY OR REGION OF COUNTIES, AS DETERMINED
21 BY THE STATE DEPARTMENT, SHALL, WITH ASSISTANCE FROM THE STATE
22 DEPARTMENT, PERFORM AN ANALYSIS OF AVAILABLE IN-HOME,
23 FAMILY-LIKE, AND OUT-OF-HOME PLACEMENT SETTINGS. ON OR BEFORE
24 JULY 1, 2019, EACH DESIGNATED COUNTY OR REGION OF COUNTIES SHALL
25 SUBMIT A REPORT TO THE STATE DEPARTMENT, INCLUDING AN
26 EVALUATION OF THE TYPES AND AVAILABILITY OF EACH PLACEMENT
27 OPTION IN THE COUNTY OR REGION OF COUNTIES, AVAILABLE PLACEMENT

1 OPTIONS IN ADJACENT COUNTIES OR REGION OF COUNTIES, AND A PLAN TO
2 EXPAND IN-HOME, FAMILY-LIKE, AND OUT-OF-HOME PLACEMENT SETTINGS
3 CAPACITY WITHIN THE COUNTY OR REGION OF COUNTIES, IF NECESSARY.

4 (b) ON OR BEFORE JULY 1, 2020, THE STATE DEPARTMENT SHALL
5 SUBMIT A REPORT TO THE JOINT BUDGET COMMITTEE. THE REPORT MUST
6 INCLUDE:

7 (I) THE COUNTY UTILIZATION RATE FOR IN-HOME, FAMILY-LIKE,
8 AND OUT-OF-HOME PLACEMENT SETTINGS;

9 (II) AN ANALYSIS OF PROJECTED FEDERAL REIMBURSEMENT FOR
10 EACH TYPE OF PLACEMENT PURSUANT TO THE FEDERAL "FAMILY FIRST
11 PREVENTION SERVICES ACT OF 2018", AS DEFINED IN SECTION 26-5-101
12 (4.5);

13 (III) A DESCRIPTION OF ANTICIPATED CHANGES IN FEDERAL
14 REIMBURSEMENT FOR EACH TYPE OF PLACEMENT;

15 (IV) AN ANALYSIS OF STATEWIDE SERVICES AND PLACEMENT
16 CAPACITY, INFORMED BY THE COUNTY REPORTS REQUIRED PURSUANT TO
17 SUBSECTION (6.6)(a) OF THIS SECTION;

18 (V) PROJECTIONS FOR THE STATEWIDE FISCAL IMPACT RESULTING
19 FROM CHANGES IN FEDERAL REIMBURSEMENT; AND

20 (VI) A PLAN TO MINIMIZE THE FISCAL IMPACT TO THE STATE
21 RESULTING FROM CHANGES IN FEDERAL REIMBURSEMENT FOR SERVICES
22 AND PLACEMENT TYPES.

23 (7) **Close-out process for county allocations.** (a) (I) For state
24 fiscal year ~~1998-99~~ 2018-19, and for each state fiscal year thereafter, ~~and~~
25 THE STATE DEPARTMENT SHALL RETAIN ANY UNSPENT GENERAL FUND
26 MONEY INCLUDED IN THE INITIAL ALLOCATION TO EACH BALANCE OF
27 STATE COUNTY, UP TO FIVE PERCENT OF THE TOTAL GENERAL FUND MONEY

1 ALLOCATED TO BALANCE OF STATE COUNTIES, AS DESCRIBED IN
2 SUBSECTION (4)(b) OF THIS SECTION AND REFERRED TO IN THIS
3 SUBSECTION (7)(a) AS "SMALL AND MEDIUM-SIZED COUNTIES".

4 (II) RETAINED MONEY PURSUANT TO SUBSECTION (7)(a)(I) OF THIS
5 SECTION MUST BE TRANSFERRED INTO THE CHILD WELFARE PREVENTION
6 AND INTERVENTION SERVICES CASH FUND, WHICH IS HEREBY CREATED IN
7 THE STATE TREASURY AND REFERRED TO IN THIS SUBSECTION (7) AS THE
8 "FUND".

9 (III) THE STATE DEPARTMENT IS AUTHORIZED TO ACCEPT GIFTS,
10 GRANTS, AND DONATIONS, WHICH MUST BE TRANSFERRED INTO THE FUND,
11 IN ADDITION TO TRANSFERS FROM THE GENERAL FUND AS APPROPRIATED
12 BY THE GENERAL ASSEMBLY.

13 (IV) MONEY FROM THE FUND MUST BE ALLOCATED BY THE STATE
14 DEPARTMENT, IN CONSULTATION WITH COUNTIES, TO SMALL AND
15 MEDIUM-SIZED COUNTIES TO INCREASE LOCAL CHILD WELFARE
16 PREVENTION AND INTERVENTION SERVICES CAPACITY AND SHALL BE USED
17 BY COUNTIES FOR THE DELIVERY OF CHILD WELFARE PREVENTION AND
18 INTERVENTION SERVICES THAT HAVE BEEN APPROVED BY THE STATE
19 DEPARTMENT.

20 (V) THE STATE DEPARTMENT SHALL WORK COLLABORATIVELY
21 WITH THE STATE BOARD OF HUMAN SERVICES TO PROMULGATE RULES
22 CONCERNING THE ALLOCATION AND USE OF MONEY FROM THE FUND.

23 (a.5) Subject to the limitations set forth in this subsection (7), the
24 state department may, at the end of a state fiscal year based upon the
25 recommendations of the child welfare allocations committee, allocate any
26 unexpended capped funds for the delivery of specific child welfare
27 services to any one or more counties whose spending has exceeded a

1 capped allocation for such specific child welfare services. SUBSEQUENT
2 TO THE ALLOCATION OF ANY UNEXPENDED CAPPED FUNDS, ANY
3 REMAINING STATE GENERAL FUND MONEY MUST BE TRANSFERRED INTO
4 THE FUND FOR ALLOCATION BY THE STATE DEPARTMENT TO COUNTIES FOR
5 THE DELIVERY OF STATE DEPARTMENT-APPROVED CHILD WELFARE
6 PREVENTION AND INTERVENTION SERVICES.

7 (b) A county may only receive funds pursuant to the provisions of
8 ~~paragraph (a) of this subsection (7)~~ SUBSECTION (7)(a) OF THIS SECTION
9 if the requirements of section 26-5-103.5 (4) have been satisfied, for
10 expenditures other than those attributable to administrative and support
11 functions as referred to in section 26-5-101 (3)(m), as defined in
12 accordance with the provisions of section 26-5-103.5 (4), and for
13 authorized expenditures attributable to caseload increases beyond the
14 caseload estimate established pursuant to subsection (3) of this section for
15 a specific capped allocation.

16 (c) A county may not receive funds pursuant to the provisions of
17 ~~paragraph (a) of this subsection (7)~~ SUBSECTION (7)(a) OF THIS SECTION
18 for authorized expenditures attributable to caseload increases for services
19 in one capped allocation from unexpended capped funds in another
20 capped allocation.

21 (d) As used in this section, "unexpended capped funds" means
22 funds that have been appropriated for child welfare services, allocated to
23 a county or group of counties as a capped allocation or allocations
24 pursuant to the provisions of subsection (4) of this section. ~~but not spent~~
25 ~~by such county or group of counties or subject to the provisions of section~~
26 ~~26-5-105.5 (3).~~

27 (9) **Child welfare funding review and restructure.** ~~(a) On or~~

1 ~~before August 1, 2016, the child welfare allocations committee shall~~
2 ~~consider whether a restructuring of child welfare funding policy would be~~
3 ~~advisable. The child welfare allocations committee shall solicit and~~
4 ~~include input from any interested county commissioners, directors of~~
5 ~~county departments of human or social services, county child welfare~~
6 ~~directors, county financial officers, the state department, and the joint~~
7 ~~budget committee in its consideration of child welfare funding~~
8 ~~restructuring. Any such policy changes must reflect federal and state law,~~
9 ~~as well as current child welfare practices.~~

10 (b) ~~On or before December 15, 2016, the child welfare allocations~~
11 ~~committee shall provide the joint budget committee with its findings and~~
12 ~~any recommendations for restructuring child welfare funding. The~~
13 ~~recommendations must include the input from stakeholders as provided~~
14 ~~for in paragraph (a) of this subsection (9), and may include standards for~~
15 ~~a new allocations model for child welfare funding and an evaluation~~
16 ~~process. The child welfare allocations committee is not required to~~
17 ~~recommend changes to the current child welfare funding structure if it~~
18 ~~determines that the current structure is the preferable option.~~

19 (c) ~~The child welfare allocations committee shall consider input~~
20 ~~from stakeholders as provided for in paragraph (a) of this subsection (9)~~
21 ~~in discussing:~~

22 (I) ~~Funding for county-level staff, services, child welfare-related~~
23 ~~operational expenses, and administrative and support functions;~~

24 (II) ~~Strategies that enhance the flexibility for counties to use child~~
25 ~~welfare funding in accordance with state and federal laws;~~

26 (III) ~~Strategies to improve job enrichment and employee retention;~~

27 (IV) ~~The impact of any recommendation on local spending~~

1 requirements;

2 ~~(V) Any statutory changes necessary to implement the~~
3 ~~recommendations; and~~

4 ~~(VI) Allocations that support current child welfare practices.~~

5 ~~(d) On or before January 1, 2018, and each January 1 thereafter,~~
6 ~~the child welfare allocations committee shall submit an annual report to~~
7 ~~the joint budget committee, the public health care and human services~~
8 ~~committee of the house of representatives, and the senate health and~~
9 ~~human services committee, or any successor committees. The report must~~
10 ~~include the results of regular assessments of the methods for the~~
11 ~~evaluation of and reporting on the allocation, use, sufficiency, and~~
12 ~~effectiveness of funding and services funded through line items from~~
13 ~~which allocations are made to counties.~~

14 **SECTION 7.** In Colorado Revised Statutes, 26-5-105.5, **repeal**
15 **(3)** as follows:

16 **26-5-105.5. State department integrated care management**
17 **program - county performance agreements - authorized -**
18 **performance incentive cash fund created - repeal.** (3) Any county that
19 has entered into a performance agreement with the state department and
20 underspends the general fund portion of its capped or targeted allocation
21 may use those funds, not to exceed five percent of the general fund
22 portion of its total capped or targeted allocation for child welfare services,
23 to either reduce its county share by the amount of the underexpenditure
24 or spend such moneys on additional services for children in the county.
25 Any balance of the general fund portion of its capped or targeted
26 allocation shall be used for additional services for children in the county.

27 **SECTION 8.** In Colorado Revised Statutes, **add** 26-5-105.8 as

1 follows:

2 **26-5-105.8. Delivery of child welfare services task force -**
3 **duties - membership - reporting requirements - repeal.** (1) THERE IS
4 CREATED IN THE STATE DEPARTMENT THE DELIVERY OF CHILD WELFARE
5 SERVICES TASK FORCE, REFERRED TO IN THIS SECTION AS THE "TASK
6 FORCE". THE STATE DEPARTMENT, IN COLLABORATION WITH COUNTIES,
7 SHALL CONVENE THE TASK FORCE AT LEAST ONCE PER QUARTER,
8 BEGINNING JULY 1, 2018. THE PURPOSE OF THE TASK FORCE IS TO:

9 (a) ANALYZE LAWS AND RULES RELATED TO THE DELIVERY OF
10 CHILD WELFARE SERVICES TO ENSURE ALIGNMENT WITH THE FEDERAL
11 "FAMILY FIRST PREVENTION SERVICES ACT OF 2018", AS DEFINED IN
12 SECTION 26-5-101 (4.5);

13 (b) DEVELOP A METHOD THROUGH WHICH TO INCENTIVIZE
14 COUNTIES FOR THE PROVISION OF SERVICES AND PLACEMENTS THAT ARE
15 BASED ON THE NEEDS OF THE CHILD, AS DETERMINED BY THE ASSESSMENT
16 AND REVIEW PROCESS REQUIRED BY THE FEDERAL "FAMILY FIRST
17 PREVENTION SERVICES ACT OF 2018", AS DEFINED IN SECTION 26-5-101
18 (4.5), AND DETERMINE THE LEVEL TO WHICH THE STATE DEPARTMENT
19 SHALL REIMBURSE THE COUNTIES FOR CERTAIN OUT-OF-HOME
20 PLACEMENTS THAT DO NOT MEET THE CRITERIA OF THE FEDERAL "FAMILY
21 FIRST PREVENTION SERVICES ACT OF 2018".

22 (c) ESTABLISH PERFORMANCE AND OUTCOME MEASURES AND THE
23 PROCESS BY WHICH TO EVALUATE THE MEASURES ASSOCIATED WITH THE
24 DELIVERY OF CHILD WELFARE SERVICES, INCLUDING BUT NOT LIMITED TO
25 RESIDENTIAL OUT-OF-HOME PLACEMENTS; FOSTER CARE; ADOPTION; AND
26 SERVICES TO CHILDREN AND YOUTH IN THEIR OWN HOMES, INCLUDING
27 PREVENTION AND INTERVENTION SERVICES, AND DETERMINE HOW THE

1 MEASURES AND EVALUATION WILL BE USED TO INFORM THE FUNDING
2 MODEL DESCRIBED IN SECTION 26-5-103.5 (7)(a) AND THE ALLOCATION OF
3 FUNDS PURSUANT TO SECTION 26-5-104 (3);

4 (d) INVESTIGATE COLLABORATIVE PREVENTION AND
5 INTERVENTION MODELS THROUGHOUT THE COUNTRY AND DETERMINE
6 MODIFICATIONS THAT CAN BE MADE TO THE COLLABORATIVE
7 MANAGEMENT AND INTEGRATED CARE MANAGEMENT PROGRAMS IN ORDER
8 TO GUARANTEE ONGOING CROSS-SYSTEMS COLLABORATION, IMPROVED
9 OUTCOMES FOR CHILDREN AND FAMILIES, INTEGRATION OF MULTI-SYSTEM
10 SERVICES, AND EXPANSION OF SYSTEM-OF-CARE PRINCIPLES, WHILE
11 MAINTAINING THE INTEGRITY AND CAPACITY OF THE CHILD WELFARE
12 SYSTEM AND ITS ASSOCIATED FUNDING;

13 (e) EVALUATE AND SELECT ONE OR MORE STATEWIDE
14 LEVEL-OF-CARE TOOLS TO ENSURE COMPLIANCE WITH THE FEDERAL
15 "FAMILY FIRST PREVENTION SERVICES ACT OF 2018", AS DEFINED IN
16 SECTION 26-5-101 (4.5);

17 (f) EVALUATE THE PROCESS THROUGH WHICH THE STATE ACCESSES
18 FEDERAL FUNDING AND DETERMINE METHODS THROUGH WHICH THE STATE
19 WILL MAXIMIZE FEDERAL FUNDING FOR THE DELIVERY OF PREVENTION
20 AND INTERVENTION SERVICES, OUT-OF-HOME PLACEMENT SERVICES, AND
21 ANY OTHER FEDERALLY FUNDED PROGRAMS OR SERVICES;

22 (g) EVALUATE MEDICAID RATES AND THE ELIGIBILITY
23 DETERMINATION PROCESS AND TIMELINE SPECIFICALLY RELATED TO
24 INDIVIDUALS INVOLVED IN THE CHILD WELFARE SYSTEM AND DEVELOP A
25 PROCESS THROUGH WHICH COUNTIES CAN MAXIMIZE MEDICAID
26 UTILIZATION; AND

27 (h) MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY, THE

1 GOVERNOR, THE STATE DEPARTMENT, AND THE CHILD WELFARE
2 ALLOCATIONS COMMITTEE CONCERNING THE TASK FORCE'S
3 RESPONSIBILITIES AND FINDINGS.

4 (2) THE TASK FORCE MEMBERS MUST BE APPOINTED BY AUGUST
5 1, 2018, AND MUST INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING
6 MEMBERS:

7 (a) THE EXECUTIVE DIRECTOR OF THE STATE DEPARTMENT, OR HIS
8 OR HER DESIGNEE;

9 (b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH
10 CARE POLICY AND FINANCING, OR HIS OR HER DESIGNEE;

11 (c) THE STATE COURT ADMINISTRATOR, OR HIS OR HER DESIGNEE;

12 (d) ONE PERSON FROM A BEHAVIORAL HEALTH SERVICES
13 PROVIDER, APPOINTED BY THE STATE DEPARTMENT;

14 (e) THREE PERSONS WHO REPRESENT THE PROVIDER COMMUNITY,
15 APPOINTED BY THE STATE DEPARTMENT AS FOLLOWS:

16 (I) ONE PERSON WHO REPRESENTS PREVENTION AND
17 INTERVENTION PROVIDERS;

18 (II) ONE PERSON WHO REPRESENTS OUT-OF-HOME PLACEMENT
19 PROVIDERS; AND

20 (III) ONE PERSON WHO REPRESENTS PROVIDERS WITH EXPERTISE
21 IN PROMISING, SUPPORTED, OR WELL-SUPPORTED PRACTICES OR
22 PROGRAMMING; AND

23 (f) THREE PERSONS WHO REPRESENT THE COUNTIES, APPOINTED BY
24 THE STATE DEPARTMENT.

25 (3) EXCEPT AS PROVIDED FOR IN SECTION 2-2-326, MEMBERS OF
26 THE TASK FORCE SHALL SERVE ON A VOLUNTARY BASIS WITHOUT
27 COMPENSATION BUT ARE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND

1 NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

2 (4) THE TASK FORCE SHALL DEVELOP A PLAN TO IMPLEMENT ITS
3 RECOMMENDATIONS AND PROVIDE A QUARTERLY UPDATE, BEGINNING
4 OCTOBER 15, 2018, ON THE TASK FORCE'S PROGRESS TO THE JOINT BUDGET
5 COMMITTEE, THE PUBLIC HEALTH CARE AND HUMAN SERVICES COMMITTEE
6 OF THE HOUSE OF REPRESENTATIVES, AND THE HEALTH AND HUMAN
7 SERVICES COMMITTEE OF THE SENATE, OR ANY SUCCESSOR COMMITTEES.

8 (5) THIS SECTION IS REPEALED, EFFECTIVE JUNE 30, 2022.

9 **SECTION 9. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
4.10.18

DRAFT

LLS NO. 18-1106.01 Jane Ritter x4342

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Competency Evaluations And Services"

A BILL FOR AN ACT

101 CONCERNING ACTIONS RELATED TO DETERMINATIONS OF
102 COMPETENCY TO PROCEED.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Budget Committee. The bill makes numerous changes to statutes related to the process of determination of competency to proceed in a criminal case.

Section 1 of the bill updates the definitions section that uses outdated terminology of a "developmental disability" to now reference "intellectual and developmental disability".

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Section 2 of the bill makes changes in the regulation of a second competency evaluation (evaluation) requested by the court, including reducing the time frame that the prosecution or defense may request a second evaluation from 14 days to 7 days and clarifying that the department of human services (department) is not responsible for conducting a second evaluation.

Section 3 of the bill concerns changes to competency evaluations and reports, including that:

- If a defendant is eligible for bond, they must be released on bond on condition that he or she cooperate with an evaluation on an outpatient and out-of-custody (outpatient) basis;
- For misdemeanors, petty offenses, and traffic offenses, excluding crimes considered victim's rights crimes, the court shall grant bond without a monetary condition, on the condition the defendant cooperates with the evaluation process on an outpatient basis;
- Bond must not be granted if the court determines the defendant is likely to willfully fail to appear or is likely to be a danger to himself or herself or others in the reasonably foreseeable future. In such case, the evaluation must be conducted at the place at which the defendant is in custody.
- If the defendant is in the custody of the department and the department recommends an inpatient evaluation, the court may so order such evaluation. A sheriff in the jurisdiction where the defendant is to return after the evaluation shall pick up the defendant within 72 hours after receiving notice that the evaluation is complete.
- The competency evaluation report (report) must include:
 - If the defendant is determined to be incompetent to proceed, whether or not there is a substantial probability that he or she can be restored to competency within the allowable time frame and whether inpatient or outpatient restoration services are recommended;
 - If available, information on previous evaluations or restoration services provided to the defendant; and
 - If the defendant meets the criteria for civil certification.

Sections 4 and 5 of the bill outline procedures to follow after a determination of competency or incompetency to proceed, including that:

- If the defendant is released on bond, a determination of whether restoration services are to be provided on an outpatient or inpatient basis. If the defendant is ordered to outpatient restoration services and he or she is

uncooperative or fails to begin services, the facility responsible for providing restoration services shall notify the court within 45 days;

- If the defendant remains in custody, a determination of the most suitable location to provide restoration services;
- If outpatient restoration services have been ordered, the court shall review the case every 30 days to assess the defendant's progress toward restoration to competency;
- If outpatient restoration services have been ordered and the department is unable to provide such services, the court may commit the defendant to the department's custody until outpatient services are available; and
- If inpatient restoration services have been ordered, the most clinically appropriate setting must be used.

Section 6 of the bill outlines the options for reviews, civil certification (certification), provision of services for persons with intellectual and developmental disabilities (provision of services), and termination of proceedings (termination), including that:

- Time periods for review and final determinations related to certification, provision of services, and termination are established for different levels of offenses;
- In no instance may confinement exceed the maximum sentence for the crime charged, and time is calculated to include aggregate time spent in custody;
- At the end of any maximum amount of time, the court shall dismiss the charges with prejudice;
- The court is required to review the case of a defendant determined to be incompetent to proceed at least every 3 months, using a report from the individual or entity responsible for evaluating the defendant. The court shall review the defendant's competency, whether there is a substantial probability he or she will be restored to competency within the allowable time frame, and if the defendant meets the criteria for certification or the provision of services.
- Based on the level of the crime involved (misdemeanor, petty offense, traffic offense, excluding victim's rights offenses; class 5 or class 6 felony, excluding victim's rights offenses; or any other felony offenses, excluding class 1 or class 2 felonies, any sex offenses, and crimes of violence), the court shall determine, at the appropriate review time and as applicable, whether:
 - The charges must be dismissed;
 - The defendant meets the criteria for certification;
 - The defendant meets the criteria for provision of

- services; or
- The defendant presents a substantial and unacceptable risk to the safety of himself or herself or of the community and should remain in the custody of the department.
- In all cases except those involving class 1 or class 2 felonies, sex offenses, and crimes of violence, if, after 3 years in confinement, the defendant has not been restored to competency, the charges against the defendant must be dismissed;
- Certification proceedings may be brought against a defendant at any time; and
- The party contesting a defendant's release bears the burden of proving, by clear and convincing evidence, that the defendant continues to present a substantial and unacceptable risk to the safety of himself or herself or of the community in the reasonably foreseeable future.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 16-8.5-101, **amend**
 3 the introductory portion, (4), and (11); **repeal** (9); and **add** (11.3) as
 4 follows:

5 **16-8.5-101. Definitions.** As used in this ~~article~~ ARTICLE 8.5,
 6 unless the context otherwise requires:

7 (4) "Competent to proceed" means that the defendant does not
 8 have a mental disability or AN INTELLECTUAL AND developmental
 9 disability that prevents the defendant from having sufficient present
 10 ability to consult with the defendant's lawyer with a reasonable degree of
 11 rational understanding in order to assist in the defense or prevents the
 12 defendant from having a rational and factual understanding of the
 13 criminal proceedings.

14 (9) ~~"Developmental disability" means a disability that has~~
 15 ~~manifested before the person reaches twenty-two years of age, that~~
 16 ~~constitutes a substantial disability to the affected individual, and is~~

1 ~~attributable to mental retardation or other neurological conditions when~~
2 ~~such conditions result in impairment of general intellectual functioning~~
3 ~~or adaptive behavior similar to that of a person with mental retardation.~~
4 ~~Unless otherwise specifically stated, the federal definition of~~
5 ~~"developmental disability", 42 U.S.C. sec. 15001 et seq., shall not apply.~~

6 (11) "Incompetent to proceed" means that, as a result of a mental
7 disability or AN INTELLECTUAL AND developmental disability, the
8 defendant does not have sufficient present ability to consult with the
9 defendant's lawyer with a reasonable degree of rational understanding in
10 order to assist in the defense, or that, as a result of a mental disability or
11 AN INTELLECTUAL AND developmental disability, the defendant does not
12 have a rational and factual understanding of the criminal proceedings.

13 (11.3) "INTELLECTUAL AND DEVELOPMENTAL DISABILITY" MEANS
14 A DISABILITY THAT HAS MANIFESTED BEFORE THE PERSON REACHES
15 TWENTY-TWO YEARS OF AGE, THAT CONSTITUTES A SUBSTANTIAL
16 DISABILITY TO THE AFFECTED INDIVIDUAL, AND THAT IS ATTRIBUTABLE TO
17 NEUROLOGICAL CONDITIONS WHEN SUCH CONDITIONS RESULT IN
18 IMPAIRMENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE
19 BEHAVIOR. UNLESS OTHERWISE SPECIFICALLY STATED, THE FEDERAL
20 DEFINITION OF "DEVELOPMENTAL DISABILITY", 42 U.S.C. SEC. 15001 ET
21 SEQ., DOES NOT APPLY.

22 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-102, **amend**
23 (2)(b) as follows:

24 **16-8.5-102. Mental incompetency to proceed - how and when**
25 **raised.** (2) The question of a defendant's competency to proceed shall be
26 raised in the following manner:

27 (b) If either the defense or the prosecution has reason to believe

1 that the defendant is incompetent to proceed, either party may file a
2 motion in advance of the commencement of the particular proceeding. A
3 motion to determine competency shall be in writing and contain a
4 certificate of counsel stating that the motion is based on a good faith
5 doubt that the defendant is competent to proceed. The motion shall set
6 forth the specific facts that have formed the basis for the motion. The
7 motion shall be sealed by the court. If the motion is made by the
8 prosecution, the prosecution shall provide to the defense a copy of the
9 motion. If the motion is made by the defense, the defense shall provide to
10 the prosecution notice of the filing of the motion at the time of filing, and
11 if the defense requests a hearing, the defense shall provide the motion to
12 the prosecution at the time the hearing is requested. The motion may be
13 filed after the commencement of the proceeding if, for good cause shown,
14 the mental disability or INTELLECTUAL AND developmental disability of
15 the defendant was not known or apparent before the commencement of
16 the proceeding.

17 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-103, **amend**
18 (3) and (4) as follows:

19 **16-8.5-103. Determination of competency to proceed.**

20 (3) Within ~~fourteen~~ SEVEN days after receipt of the court-ordered report,
21 either party may request a hearing or a second COMPETENCY evaluation.

22 (4) If a party requests a second COMPETENCY evaluation, any
23 pending requests for a hearing shall be continued until the receipt of the
24 second COMPETENCY evaluation report. The report of the expert
25 conducting the second COMPETENCY evaluation ~~shall~~ MUST be completed
26 and filed with the court within ~~sixty-three~~ THIRTY-FIVE days after the
27 court order allowing the second COMPETENCY evaluation, unless the time

1 period is extended by the court for good cause. If the second
2 COMPETENCY evaluation is requested by the court, it ~~shall~~ MUST be paid
3 for by the court. REGARDLESS OF THE SOURCE OF THE REQUEST FOR THE
4 SECOND COMPETENCY EVALUATION, THE DEPARTMENT IS NOT
5 RESPONSIBLE FOR CONDUCTING THE SECOND COMPETENCY EVALUATION.

6 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-105, **amend**
7 (1), (2), and (5) as follows:

8 **16-8.5-105. Competency evaluations and reports.**

9 (1) (a) (I) The court shall order that the COMPETENCY evaluation be
10 conducted on an outpatient basis or, if the defendant is in custody, at the
11 place where the defendant is in custody, EXCEPT AS PROVIDED IN
12 SUBSECTION (1)(b) OF THIS SECTION. The defendant ~~shall~~ MUST be
13 released on bond if ~~otherwise~~ eligible for bond. IF THE DEFENDANT IS
14 ELIGIBLE FOR BOND, AFTER CONSIDERATION OF THE FACTORS IN ARTICLE
15 4 OF THIS TITLE 16, THE COURT SHALL DETERMINE THE TYPE OF BOND AND
16 THE CONDITIONS OF RELEASE, WHICH MUST INCLUDE COOPERATION WITH
17 THE COMPETENCY EVALUATION ON AN OUTPATIENT AND OUT-OF-CUSTODY
18 BASIS. A REQUEST FOR A COMPETENCY EVALUATION IS NOT A BARRIER TO
19 RELEASE ON BOND WITH APPROPRIATE AND LEAST RESTRICTIVE
20 CONDITIONS. NOTHING IN THIS SUBSECTION (1)(a)(I) LIMITS THE
21 AVAILABILITY OF A COURT-ORDERED EVALUATION FOR A PERSON WITH A
22 MENTAL HEALTH DISORDER PURSUANT TO SECTION 27-65-106 OR INVOKES
23 THE EMERGENCY PROCEDURE SET FORTH IN SECTION 27-65-105.

24 (II) FOR ALL MISDEMEANORS, ALL PETTY OFFENSES, AND TRAFFIC
25 OFFENSES SET FORTH IN TITLE 42, EXCLUDING THOSE OFFENSES
26 ENUMERATED IN SECTION 24-4.1-302 (1), THE COURT SHALL GRANT THE
27 DEFENDANT BOND WITHOUT A MONETARY CONDITION OF RELEASE UNLESS

1 THE COURT DETERMINES, ON THE RECORD, THAT THE DEFENDANT
2 PRESENTS A SUBSTANTIAL RISK:

3 (A) OF FLIGHT FROM PROSECUTION;

4 (B) TO THE SAFETY OF ANOTHER PERSON OR PERSONS, KNOWN OR
5 UNKNOWN; OR

6 (C) OF HARASSING OR INTIMIDATING A VICTIM OR WITNESS.

7 (III) AS A CONDITION OF ANY NONMONETARY BOND GRANTED
8 PURSUANT TO THIS SUBSECTION (1)(a)(III), THE COURT SHALL INCLUDE A
9 CONDITION REQUIRING THE COOPERATION WITH THE COMPETENCY
10 EVALUATION ON AN OUTPATIENT AND OUT-OF-CUSTODY BASIS.

11 (IV) IF THE DEFENDANT REMAINS IN CUSTODY AND IS UNABLE TO
12 MEET THE MONETARY CONDITIONS OF BOND, WHEN APPLICABLE, THE
13 COURT SHALL ORDER THE COMPETENCY EVALUATION TO BE CONDUCTED
14 AT THE PLACE WHERE THE DEFENDANT IS IN CUSTODY.

15 <{Note: The DA's and PDs disagree with PR bond section language -
16 will it incentivize claims of incompetence? Linked to questions re HB
17 18-1089 (for both DA & PD).}>

18 (b) Notwithstanding the provisions of ~~paragraph (a) of this~~
19 ~~subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, IF THE DEPARTMENT
20 PROVIDES A RECOMMENDATION TO THE COURT THAT CONDUCTING THE
21 COMPETENCY EVALUATION ON AN INPATIENT BASIS IS APPROPRIATE,

22 <{Note: There is disagreement on this language from PDs. Looking for
23 clearer language.}> the court may order the defendant placed in the

24 DEPARTMENT'S custody of the Colorado mental health institute at Pueblo
25 for the time necessary to conduct the COMPETENCY evaluation. if UPON
26 ENTRY OF SUCH A COURT ORDER, THE EXECUTIVE DIRECTOR HAS THE SAME
27 AUTHORITY WITH RESPECT TO CUSTODY AS PROVIDED FOR IN SECTION

1 16-8-105.5 (4).

2 ~~(I) The court finds the defendant may be a danger to self or others~~
3 ~~as defined in section 27-65-102, C.R.S.;~~

4 ~~(II) The court finds that an inadequate competency evaluation and~~
5 ~~report has been completed or two or more conflicting competency~~
6 ~~evaluations and reports have been completed;~~

7 ~~(III) The court finds that an observation period is necessary to~~
8 ~~determine if the defendant is competent to stand trial;~~

9 ~~(IV) The court receives a recommendation from the Colorado~~
10 ~~mental health institute at Pueblo court services evaluator that conducting~~
11 ~~the evaluation at the Colorado mental health institute at Pueblo is~~
12 ~~appropriate because the evaluator conducting the evaluation for the~~
13 ~~Colorado mental health institute at Pueblo determines that the defendant~~
14 ~~has been uncooperative or the defendant has clinical needs that warrant~~
15 ~~transfer to the Colorado mental health institute at Pueblo; or~~

16 ~~(V) The court receives written approval for the evaluation to be~~
17 ~~conducted at the Colorado mental health institute at Pueblo from the~~
18 ~~executive director of the department of human services, or his or her~~
19 ~~designee.~~

20 <{*Note: The DAs disagree the repeal of subparagraphs (I) through (V)*
21 *- provisions were added to statute less than 2 yrs ago...is there a claim*
22 *that there has been a problem with changes?.*>

23 (c) The court, when setting bond pursuant to section 16-4-103, if
24 the defendant is eligible for bond, and after receiving any information
25 pursuant to section 16-4-106, shall not consider the need for the
26 defendant to receive an A COMPETENCY evaluation pursuant to this article
27 ARTICLE 8.5.

1 (d) If a defendant is in THE DEPARTMENT'S custody at the Colorado
2 ~~mental health institute at Pueblo~~ for purposes of the COMPETENCY
3 evaluation ordered pursuant to this ~~article~~ ARTICLE 8.5 and the defendant
4 has completed the COMPETENCY evaluation and must be returned to a
5 county jail, the ~~county~~ sheriff in the jurisdiction where the defendant must
6 return shall ~~make all reasonable efforts to take custody of the defendant~~
7 ~~as soon as practicable once the defendant's evaluation is completed~~ TAKE
8 CUSTODY OF THE DEFENDANT WITHIN SEVENTY-TWO HOURS AFTER
9 RECEIVING NOTIFICATION FROM THE DEPARTMENT THAT THE DEFENDANT'S
10 COMPETENCY EVALUATION IS COMPLETE. AT THE TIME THE DEPARTMENT
11 NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO NOTIFY THE COURT
12 THAT THE DEFENDANT'S COMPETENCY EVALUATION IS COMPLETE. <{Note:
13 Disagreement from PDs on this language.}>

14 (e) Nothing in this section shall restrict RESTRICTS the right of the
15 defendant to procure an A COMPETENCY evaluation as provided in section
16 ~~16-8.5-107~~ SECTION 16-8.5-106.

17 (2) The defendant shall cooperate with the competency evaluator
18 and with other personnel providing ancillary services, such as testing and
19 radiological services. Statements made by the defendant in the course of
20 the evaluation shall be protected as provided in section 16-8.5-108. If the
21 defendant does not cooperate with the competency evaluator and other
22 personnel providing ancillary services and the lack of cooperation is not
23 the result of a AN INTELLECTUAL AND developmental disability or a mental
24 disability, the fact of the defendant's noncooperation with the competency
25 evaluator and other personnel providing ancillary services may be
26 admissible in the defendant's competency or restoration hearing to rebut
27 any evidence introduced by the defendant with regard to the defendant's

1 competency.

2 (5) The ~~report of evaluation shall~~ COMPETENCY EVALUATION
3 REPORT MUST include but need not be limited to:

4 (a) The name of each physician, psychologist, or other expert who
5 examined the defendant; ~~and~~

6 (b) A description of the nature, content, extent, and results of the
7 COMPETENCY evaluation and any tests conducted; ~~and~~

8 (c) A diagnosis and prognosis of the defendant's mental disability
9 or INTELLECTUAL AND developmental disability; ~~and~~

10 (d) An opinion as to whether the defendant suffers from a mental
11 disability or AN INTELLECTUAL AND developmental disability; ~~and~~

12 (e) An opinion as to whether the defendant is competent to
13 proceed;

14 (f) IF THE OPINION OF THE COMPETENCY EVALUATOR IS THAT THE
15 DEFENDANT IS INCOMPETENT TO PROCEED:

16 (I) AN OPINION AS TO WHETHER THERE IS A SUBSTANTIAL
17 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
18 ATTAIN COMPETENCY WITHIN THE TIME ALLOWED PURSUANT TO SECTION
19 16-8.5-116;

20 (II) A RECOMMENDATION AS TO WHETHER INPATIENT
21 RESTORATION SERVICES ARE CLINICALLY NECESSARY TO RESTORE THE
22 DEFENDANT TO COMPETENCY. IF INPATIENT RESTORATION SERVICES ARE
23 NOT CLINICALLY NECESSARY, AND THE COMPETENCY EVALUATOR
24 THEREFORE RECOMMENDS OUTPATIENT AND OUT-OF-CUSTODY
25 RESTORATION SERVICES, THE COMPETENCY EVALUATION REPORT MUST
26 DETAIL THE OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES
27 AVAILABLE TO THE DEFENDANT.

1 (g) IF AVAILABLE, A DESCRIPTION OF ALL COMPETENCY
2 EVALUATIONS OR RESTORATION SERVICES THAT WERE PREVIOUSLY
3 PROVIDED TO THE DEFENDANT; AND

4 (h) THE COMPETENCY EVALUATOR'S OPINION AS TO WHETHER THE
5 DEFENDANT MEETS THE CRITERIA FOR CERTIFICATION PURSUANT TO
6 ARTICLE 65 OF TITLE 27 OR WHETHER THE DEFENDANT IS ELIGIBLE FOR
7 SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF
8 TITLE 27.

9 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-111, **amend**
10 (2); and **add** (3) as follows:

11 **16-8.5-111. Procedure after determination of competency or**
12 **incompetency.** (2) If the final determination made pursuant to section
13 16-8.5-103 is that the defendant is incompetent to proceed, the court has
14 the following options:

15 (a) (I) If the defendant is on bond or summons, the court shall
16 ~~consider whether~~ ORDER THAT restoration to competency ~~should occur~~
17 TAKE PLACE on an outpatient and out-of-custody basis, UNLESS THE
18 DEPARTMENT RECOMMENDS INPATIENT RESTORATION SERVICES PURSUANT
19 TO SECTION 16-8.5-105 (5)(f)(II).

20 (II) If the defendant is in custody, the court may release the
21 defendant on bond ~~upon compliance with the standards and procedures~~
22 ~~for such release prescribed by statute and by~~ CONSISTENT WITH ARTICLE
23 4 OF THIS TITLE 16 AND the Colorado rules of criminal procedure. As a
24 condition of SUCH bond, the court ~~may~~ SHALL ORDER THAT THE
25 RESTORATION TAKE PLACE ON AN OUTPATIENT AND OUT-OF-CUSTODY
26 BASIS. THE COURT MAY require the defendant to obtain any OUTPATIENT
27 treatment or habilitation services that are available to the defendant, such

1 as ~~inpatient or~~ outpatient treatment at a community mental health center
2 or in any other appropriate OUTPATIENT treatment setting, as determined
3 by the court. Nothing in this section authorizes the court to order
4 community mental health centers or other providers to provide treatment
5 for persons not otherwise eligible for these services. ~~At any hearing to~~
6 ~~determine eligibility for release on bond, the court shall consider any~~
7 ~~effect the defendant's incompetency may have on the court's ability to~~
8 ~~ensure the defendant's presence for hearing or trial. There is a~~
9 ~~presumption that the defendant's incompetency will inhibit the defendant's~~
10 ~~ability to ensure his or her presence for trial. Pursuant to section~~
11 ~~27-60-105, the office of behavioral health is the entity responsible for the~~
12 ~~oversight of restoration education and coordination of services necessary~~
13 ~~to competency restoration~~ THE INDIVIDUAL AGENCY RESPONSIBLE FOR
14 PROVIDING RESTORATION SERVICES FOR THE DEFENDANT SHALL NOTIFY
15 THE COURT WITHIN FORTY-FIVE DAYS OF BEGINNING OR ATTEMPTING TO
16 BEGIN RESTORATION SERVICES IF THE DEFENDANT IS UNCOOPERATIVE
17 WITH ACCEPTING RESTORATION SERVICES. PURSUANT TO SECTION
18 27-60-105, THE DEPARTMENT IS THE ENTITY RESPONSIBLE FOR THE
19 DEVELOPMENT OF RESTORATION CURRICULA AND NECESSARY TRAINING TO
20 CREATE OUTPATIENT RESTORATION SERVICES IN ANY SETTING.

21 <{*Note: The PDs have general issues with language above and below*
22 *concerning jail-based restoration.*}>

23 (b) ~~If the court finds that the defendant is not eligible for release~~
24 IF THE DEFENDANT IS NOT RELEASED from custody, THE COURT SHALL
25 ORDER THE DEPARTMENT TO PROVIDE RESTORATION SERVICES AT THE
26 PLACE WHERE THE DEFENDANT IS IN CUSTODY, UNLESS THE COURT ORDERS
27 INPATIENT RESTORATION SERVICES UNDER ONE OF THE FOLLOWING

1 EXCEPTIONS:

2 (I) The court may commit the defendant to the custody of the
3 department ~~in which case~~ IF THE DEPARTMENT HAS RECOMMENDED THAT
4 RESTORATION SERVICES BE PROVIDED ON AN INPATIENT BASIS PURSUANT
5 TO SECTION 16-8.5-105 (5)(f)(II); OR

6 (II) IF THE COURT COMMITS THE DEFENDANT TO THE CUSTODY OF
7 THE DEPARTMENT, the executive director has the same powers with
8 respect to A commitment ~~as the executive director has following a~~
9 ~~commitment under~~ PROVIDED FOR IN section 16-8-105.5 (4).

10 (c) ~~At such time as the department recommends to the court that~~
11 ~~the defendant is restored to competency, the defendant may be returned~~
12 ~~to custody of the county jail or to previous bond status~~ IF THE COURT HAS
13 ORDERED OUTPATIENT RESTORATION SERVICES AND THE DEPARTMENT
14 REPORTS THAT IT IS UNABLE TO PROVIDE RESTORATION SERVICES ON AN
15 OUTPATIENT BASIS, THE COURT MAY COMMIT THE DEFENDANT TO THE
16 CUSTODY OF THE DEPARTMENT UNTIL SUCH TIME AS THE DEPARTMENT IS
17 ABLE TO PROVIDE OUTPATIENT RESTORATION SERVICES, AT WHICH POINT
18 THE DEPARTMENT MAY DISCHARGE THE DEFENDANT AND BEGIN OR
19 RESUME PROVIDING SERVICES ON AN OUTPATIENT BASIS, SUBJECT TO THE
20 PROVISIONS OF SECTION 16-8.5-116.

21 (d) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
22 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT A LESS
23 RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY APPROPRIATE, THE
24 EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE COURT, <{**NOTE: DAS**
25 **DISAGREE THAT "PROPER NOTICE TO COURT" IS ADEQUATE FOR VRA**
26 **CONCERNS.**}> HAS THE AUTHORITY TO MOVE THE DEFENDANT TO A LESS
27 RESTRICTIVE FACILITY IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE

1 DEFENDANT IS NOT YET RESTORED TO COMPETENCY BUT HE OR SHE COULD
2 BE PROPERLY RESTORED TO COMPETENCY IN A LESS RESTRICTIVE FACILITY.

3 (e) AT SUCH TIME AS THE DEPARTMENT RECOMMENDS TO THE
4 COURT THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE
5 DEFENDANT MAY BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL, IF
6 THE DEFENDANT IS NOT ON BOND OR SUMMONS, OR TO PREVIOUS BOND
7 STATUS. IF THE RECOMMENDATION IS TO RETURN THE DEFENDANT TO THE
8 CUSTODY OF THE COUNTY JAIL, THE DEPARTMENT SHALL NOTIFY THE
9 SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT IS TO BE RETURNED,
10 AND THE SHERIFF SHALL TAKE CUSTODY OF THE DEFENDANT WITHIN
11 SEVENTY-TWO HOURS AFTER RECEIVING SUCH NOTIFICATION. AT THE TIME
12 THE DEPARTMENT NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO
13 NOTIFY THE COURT THAT THE DEPARTMENT IS RETURNING THE DEFENDANT
14 TO THE CUSTODY OF THE JAIL.

15 (3) FOR A DEFENDANT WHO IS RECEIVING OUTPATIENT AND
16 IN-CUSTODY RESTORATION SERVICES, THE COURT SHALL REVIEW THE CASE
17 EVERY THIRTY DAYS TO ASSESS THE CLINICAL STATUS OF THE DEFENDANT
18 AND HIS OR HER PROGRESS TOWARD RESTORATION.

19 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-114, **amend**
20 (2) as follows:

21 **16-8.5-114. Procedure after hearing concerning restoration to**
22 **competency.** (2) If, after the hearing held pursuant to section 16-8.5-113,
23 the court determines that the defendant remains incompetent to proceed,
24 the court may continue or modify any orders entered at the time of the
25 original determination of incompetency and may commit or recommit the
26 defendant or enter any new order necessary to facilitate the defendant's
27 restoration to mental competency, CONSISTENT WITH THE REQUIREMENTS

1 OF SECTION 16-8.5-111.

2 **SECTION 7.** In Colorado Revised Statutes, **repeal and reenact**
3 16-8.5-116 as follows:

4 **16-8.5-116. Certification - reviews - termination of**
5 **proceedings - rules.** (1) SUBJECT TO THE TIME PERIODS SET FORTH IN
6 SUBSECTIONS (3), (4), AND (5) OF THIS SECTION, WHICHEVER IS SHORTEST,
7 A DEFENDANT COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR
8 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
9 INCOMPETENCY TO PROCEED MUST NOT REMAIN CONFINED FOR A PERIOD
10 IN EXCESS OF THE MAXIMUM TERM OF CONFINEMENT THAT COULD BE
11 IMPOSED FOR THE OFFENSE OR OFFENSES WITH WHICH THE DEFENDANT IS
12 CHARGED, LESS ANY TIME CREDITS THE DEFENDANT WOULD BE ENTITLED
13 TO PURSUANT TO ARTICLE 22.5 OF TITLE 17 AND SECTION 17-26-109. THE
14 TIME PERIODS SET FORTH IN SUBSECTIONS (3), (4), AND (5) OF THIS
15 SECTION MUST BE CALCULATED USING THE AGGREGATE TIME SPENT IN
16 CUSTODY OF THE DEPARTMENT OR A COUNTY JAIL. AT THE END OF SUCH
17 TIME PERIOD, THE COURT SHALL DISMISS THE CHARGES WITH PREJUDICE,
18 AND CERTIFICATION PROCEEDINGS OR PROVISION OF SERVICES, IF ANY,
19 MUST BE GOVERNED BY ARTICLE 65 OR 10.5 OF TITLE 27. <{Note: DAs
20 disagree with dismissal language.}>
21 <{Note: DAs also disagree with the timelines for dismissal, as set forth
22 below.}>

23 (2) AT LEAST EVERY THREE MONTHS, THE COURT SHALL REVIEW
24 THE CASE OF A DEFENDANT WHO HAS BEEN DETERMINED TO BE
25 INCOMPETENT TO PROCEED WITH REGARD TO THE PROBABILITY THAT THE
26 DEFENDANT WILL EVENTUALLY BE RESTORED TO COMPETENCY AND WITH
27 REGARD TO THE JUSTIFICATION FOR CERTIFICATION OR CONFINEMENT. THE

1 REVIEW MAY BE HELD IN CONJUNCTION WITH A RESTORATION HEARING
2 HELD PURSUANT TO SECTION 16-8.5-113. PRIOR TO EACH REVIEW, THE
3 INDIVIDUAL OR ENTITY EVALUATING THE DEFENDANT SHALL PROVIDE THE
4 COURT WITH A CURRENT REPORT REGARDING:

5 (a) THE DEFENDANT'S COMPETENCY;

6 (b) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
7 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE TIME
8 PERIODS SET FORTH IN THIS SECTION; AND

9 (c) WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR
10 CERTIFICATION SET FORTH IN ARTICLE 65 OF TITLE 27 OR IS ELIGIBLE FOR
11 SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27.

12 (3) (a) IF THE DEFENDANT IS CHARGED WITH A MISDEMEANOR, A
13 MISDEMEANOR TRAFFIC OFFENSE, OR A PETTY OFFENSE, EXCEPT FOR THOSE
14 OFFENSES ENUMERATED IN SECTION 24-4.1-302 (1), AND, IF AFTER THE
15 FIRST THREE-MONTH REVIEW DESCRIBED IN SUBSECTION (2) OF THIS
16 SECTION, THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT
17 THE DEFENDANT REMAINS INCOMPETENT AND:

18 (I) THERE IS NOT A SUBSTANTIAL PROBABILITY THE DEFENDANT
19 WILL BE RESTORED TO COMPETENCY WITHIN THE NEXT THREE MONTHS,
20 THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT,
21 SUBJECT TO THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION; OR

22 (II) BASED ON AVAILABLE EVIDENCE, THERE IS A SUBSTANTIAL
23 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
24 WITHIN THE NEXT THREE MONTHS, RESTORATION SERVICES MAY CONTINUE
25 AND A SECOND REVIEW MUST BE HELD NO LATER THAN THREE MONTHS
26 AFTER THE FIRST THREE-MONTH REVIEW. IF, AT THE TIME OF THE SECOND
27 THREE-MONTH REVIEW, THE DEFENDANT IS NOT RESTORED TO

1 COMPETENCY, THEN THE COURT SHALL DISMISS THE CHARGES AGAINST
2 THE DEFENDANT. ANY FURTHER PROCEEDINGS MAY BE INITIATED AS SET
3 FORTH IN SUBSECTION (6) OF THIS SECTION.

4 (4) (a) IF THE DEFENDANT IS CHARGED WITH ANY CLASS 5 OR
5 CLASS 6 FELONY, EXCEPT FOR THOSE OFFENSES ENUMERATED IN SECTION
6 24-4.1-302 (1), OR WITH ANY MISDEMEANOR OFFENSE THAT IS NOT
7 INCLUDED IN SUBSECTION (3)(a) OF THIS SECTION, AND, AFTER THE
8 FOURTH THREE-MONTH REVIEW, AS DESCRIBED IN SUBSECTION (2) OF THIS
9 SECTION, THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT
10 THE DEFENDANT REMAINS INCOMPETENT TO PROCEED AND EITHER THAT:

11 (I) THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE
12 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE NEXT SIX
13 MONTHS, THEN THE COURT SHALL DISMISS THE CHARGES AGAINST THE
14 DEFENDANT. ANY FURTHER PROCEEDINGS MAY BE INITIATED AS SET FORTH
15 IN SUBSECTION (6) OF THIS SECTION.

16 (II) BASED ON AVAILABLE EVIDENCE THERE IS A SUBSTANTIAL
17 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
18 WITHIN THE NEXT SIX MONTHS, THEN RESTORATION SERVICES MAY
19 CONTINUE, AND THE COURT SHALL CONTINUE TO REVIEW THE CASE AS
20 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION. IF THE DEFENDANT IS
21 NOT RESTORED TO COMPETENCY WITHIN SIX MONTHS AFTER THE FOURTH
22 THREE-MONTH REVIEW, AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION,
23 THEN THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT.
24 ANY FURTHER PROCEEDINGS MAY BE INITIATED AS SET FORTH IN
25 SUBSECTION (6) OF THIS SECTION.

26 (5) (a) IF THE DEFENDANT IS CHARGED WITH ANY OTHER FELONY
27 OFFENSE, EXCEPT A CLASS 1 OR CLASS 2 FELONY, A SEX OFFENSE AS

1 DEFINED IN SECTION 18-1.3-1003 (5), OR A CRIME OF VIOLENCE AS
2 DEFINED IN SECTION 18-1.3-406 (2), THE COURT REVIEW MUST BE
3 CONDUCTED EVERY THREE MONTHS, AS DESCRIBED IN SUBSECTION (2) OF
4 THIS SECTION, AND PURSUANT TO THE PROVISIONS OF THIS SUBSECTION
5 (5).

6 (b) IF, AFTER THREE YEARS, A DEFENDANT WHO HAS BEEN
7 COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR OTHERWISE
8 CONFINED AS A RESULT OF A DETERMINATION OF INCOMPETENCY HAS NOT
9 BEEN RESTORED TO COMPETENCY, THE COURT SHALL DISMISS THE
10 CHARGES, SUBJECT TO THE PROVISIONS OF SUBSECTION (5)(c) OR (5)(d) OF
11 THIS SECTION.

12 (c) IF THE CHARGES AGAINST A DEFENDANT WHO IS GOVERNED BY
13 THE PROVISIONS OF THIS SUBSECTION (5) ARE DISMISSED PURSUANT TO
14 SUBSECTION (5)(b) OF THIS SECTION, SUBSEQUENT ACTIONS INCLUDE:
15 <{**Note: DAs feel there is a jurisdictional problem with this language**
16 **- can court take action at all after case is dismissed?.**}>

17 (I) CERTIFICATION PROCEEDINGS, PURSUANT TO ARTICLE 65 OF
18 TITLE 27, IF THE DEFENDANT MEETS THE REQUIREMENTS FOR
19 CERTIFICATION PURSUANT TO ARTICLE 65 OF TITLE 27; OR

20 (II) THE PROVISION OF SERVICES, PURSUANT TO ARTICLE 10.5 OF
21 TITLE 27, IF THE DEFENDANT MEETS THE CRITERIA FOR SUCH SERVICES; OR

22 (III) THE COURT MAY COMMIT THE DEFENDANT TO THE CUSTODY
23 OF THE DEPARTMENT IF: <{**Note: There is disagreement on language for**
24 **(III).**}>

25 (A) THE DEFENDANT DOES NOT MEET THE CRITERIA FOR
26 CERTIFICATION OR SERVICES PURSUANT TO SUBSECTIONS (5)(c)(I) AND
27 (5)(c)(II) OF THIS SECTION; AND

1 (B) THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT
2 THE DEFENDANT, DUE TO A MENTAL ILLNESS, PRESENTS A SUBSTANTIAL
3 AND UNACCEPTABLE RISK TO THE SAFETY OF HIMSELF OR HERSELF OR TO
4 ANOTHER PERSON OR PERSONS IN THE REASONABLY FORESEEABLE FUTURE.
5 THE COURT SHALL REVIEW THE COMMITMENT ORDER EVERY SIX MONTHS
6 TO DETERMINE WHETHER THE DEFENDANT CONTINUES TO MEET THIS
7 STANDARD.

8 (d) (I) IF, WHILE THE DEFENDANT IS IN THE DEPARTMENT'S
9 CUSTODY, THE DEPARTMENT DETERMINES THAT THE DEFENDANT DOES
10 NOT PRESENT A SUBSTANTIAL AND UNACCEPTABLE RISK TO THE SAFETY OF
11 HIMSELF OR HERSELF OR TO ANOTHER PERSON OR PERSONS IN THE
12 REASONABLY FORESEEABLE FUTURE, THE DEPARTMENT SHALL REPORT
13 SUCH DETERMINATION TO THE COURT THAT COMMITTED THE DEFENDANT
14 TO ITS CUSTODY. IF THE PROSECUTION OR DEFENSE DOES NOT FILE A
15 WRITTEN OBJECTION WITH THE COURT PURSUANT TO SUBSECTION
16 (5)(d)(II) OF THIS SECTION WITHIN FOURTEEN DAYS, THE COURT SHALL
17 TERMINATE THE COMMITMENT MADE PURSUANT TO SUBSECTION (5)(c)(III)
18 OF THIS SECTION AND RELEASE THE DEFENDANT FROM THE DEPARTMENT'S
19 CUSTODY.

20 (II) IF THE PROSECUTION OR DEFENSE OBJECTS TO A DEFENDANT'S
21 RELEASE PURSUANT TO SUBSECTION (5)(d)(I) OF THIS SECTION, THE COURT
22 SHALL HOLD A HEARING WITHIN TWENTY-ONE DAYS AFTER THE FILING OF
23 THE OBJECTION. THE PARTY CONTESTING THE DEFENDANT'S RELEASE
24 BEARS THE BURDEN OF PROVING, BY CLEAR AND CONVINCING EVIDENCE,
25 THAT THE DEFENDANT, DUE TO A MENTAL ILLNESS, CONTINUES TO
26 PRESENT A SUBSTANTIAL AND UNACCEPTABLE RISK TO THE SAFETY OF
27 HIMSELF OR HERSELF OR TO ANOTHER PERSON OR PERSONS IN THE

1 REASONABLY FORESEEABLE FUTURE. IF THE COURT FINDS BY CLEAR AND
2 CONVINCING EVIDENCE THAT THE DEFENDANT, DUE TO A MENTAL ILLNESS,
3 PRESENTS A SUBSTANTIAL AND UNACCEPTABLE RISK TO THE SAFETY OF
4 HIMSELF OR HERSELF OR TO ANOTHER PERSON OR PERSONS IN THE
5 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL MAKE WRITTEN
6 FINDINGS AUTHORIZING THE CONTINUED COMMITMENT OF THE
7 DEFENDANT.

8 (6) IF THE CHARGES AGAINST A DEFENDANT ARE DISMISSED
9 PURSUANT TO SUBSECTION (3)(a)(II) OR (4)(a)(II) OF THIS SECTION,
10 SUBSEQUENT ACTIONS INCLUDE:

11 (a) CERTIFICATION PROCEEDINGS, IF ANY, GOVERNED BY ARTICLE
12 65 OF TITLE 27, IF THE DEFENDANT MEETS THE REQUIREMENTS FOR
13 CERTIFICATION PURSUANT TO TITLE 27; OR

14 (b) THE PROVISION OF SERVICES, PURSUANT TO ARTICLE 10.5 OF
15 TITLE 27, IF THE DEFENDANT MEETS THE CRITERIA FOR SUCH SERVICES.

16 (7) NOTWITHSTANDING THE TIME FRAMES PROVIDED IN
17 SUBSECTIONS (3), (4), AND (5) OF THIS SECTION, FOR ANY OFFENSE FOR
18 WHICH THE DEFENDANT REMAINS CONFINED FOR A PERIOD OF TIME IN
19 EXCESS OF ONE YEAR, IF THE COURT DETERMINES, BASED ON AVAILABLE
20 EVIDENCE, THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
21 DEFENDANT WILL NOT BE RESTORED TO COMPETENCY WITHIN THE
22 FORESEEABLE FUTURE, THE COURT MAY ORDER THE DEFENDANT'S
23 RELEASE FROM COMMITMENT PURSUANT TO THIS ARTICLE 8.5 THROUGH
24 ONE OR MORE OF THE FOLLOWING MEANS:

25 (a) UPON MOTION OF THE DISTRICT ATTORNEY, THE DEFENDANT,
26 OR, ON ITS OWN MOTION, THE COURT MAY TERMINATE THE CRIMINAL
27 PROCEEDING, TERMINATE THE COMMITMENT MADE PURSUANT TO

1 SUBSECTION (5)(c)(III) OF THIS SECTION, OR TERMINATE THE
2 RESTORATION SERVICES ORDER;

3 (b) THE COURT MAY COMMENCE CERTIFICATION PROCEEDINGS
4 PURSUANT TO THE PROVISIONS OF ARTICLE 65 OF TITLE 27, IF THE
5 DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION PURSUANT TO
6 SAID ARTICLE 65; OR

7 (c) IN THE CASE OF A DEFENDANT WHO HAS BEEN FOUND ELIGIBLE
8 FOR SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27 DUE TO AN
9 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, THE COURT OR A PARTY
10 MAY INITIATE AN ACTION TO RESTRICT THE RIGHTS OF THE DEFENDANT
11 PURSUANT TO ARTICLE 10.5 OF TITLE 27.

12 (8) IN EACH CASE, THE COURT SHALL ENTER A WRITTEN DECISION
13 OUTLINING WHY THE COURT DID OR DID NOT TERMINATE THE CRIMINAL
14 PROCEEDING.

15 (9) THE DEPARTMENT SHALL PROMULGATE SUCH RULES AS
16 NECESSARY TO CONSISTENTLY ENFORCE THE PROVISIONS OF THIS ARTICLE
17 8.5.

18 **SECTION 8. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
4.10.18

DRAFT

Temporary storage location: C:\Users\Jane_Ritter\Desktop\Attachments\Jail based services jbc.tmp

LLS NO. 18-#### Jane Ritter x4342

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Jail-based Behavioral Health Services"

A BILL FOR AN ACT

101 **CONCERNING THE PROVISION OF JAIL-BASED BEHAVIORAL HEALTH**
102 **SERVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Budget Committee. The bill continues to allow the correctional treatment cash fund to be used to provide treatment for persons with mental and behavioral health disorders who are being served through the jail-based behavioral health services program (program). The program is housed in the office of behavioral health. The purpose of the

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

program is to provide adequate staff to complete competency screenings, prescribe psychiatric medications as necessary, and provide mental health counseling and transitional care coordination; train jail staff on behavioral health disorders and best practices in working with individuals with mental health, substance use, and co-occurring disorders; and fund administrative costs to jails participating in the program. Jails that are participating in the program shall, at a minimum:

- Screen individuals who are being booked into the facility for various behavioral health issues;
- Provide adequate and appropriate access to health care and medications;
- Coordinate services with community mental health providers prior to the release of an inmate to ensure continuity of care following his or her release from the jail facility; and
- Track performance outcome measures for individuals affected by the program.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 27-60-100.3, **add** (4.7) as follows:

27-60-100.3. Definitions. As used in this article 60, unless the context otherwise requires:

(4.7) "OFFICE" MEANS THE OFFICE OF BEHAVIORAL HEALTH IN THE DEPARTMENT OF HUMAN SERVICES.

SECTION 2. In Colorado Revised Statutes, 27-60-105, **amend** (2), (4) introductory portion, (4)(d), (4)(e), (5) introductory portion, (5)(d), and (5)(e); and **add** (4)(f) and (5)(f) as follows:

27-60-105. Outpatient restoration to competency services - jail-based behavioral health services - legislative declaration - responsible entity - duties - report. (2) The office of behavioral health ~~referred to in this section as the "office",~~ shall serve as a central organizing structure and responsible entity for the provision of competency restoration education services, ~~and~~ coordination of

1 competency restoration services ordered by the court pursuant to section
2 19-2-1303 (2) or 16-8.5-111 (2)(a), AND JAIL-BASED BEHAVIORAL HEALTH
3 SERVICES PURSUANT TO SECTION 27-60-106.

4 (4) Beginning July 1, 2018, the office ~~shall have~~ HAS the
5 following duties and responsibilities, subject to available appropriations:

6 (d) To engage with key stakeholders in the juvenile and adult
7 justice systems to develop best practices in the delivery of competency
8 restoration services; ~~and~~

9 (e) To make recommendations for legislation; AND

10 (f) TO OVERSEE THE FUNCTIONS OF THE JAIL-BASED BEHAVIORAL
11 HEALTH SERVICES PROGRAM CREATED IN SECTION 27-60-106.

12 (5) NOTWITHSTANDING SECTION 24-1-136, on or before January
13 1, 2019, and every January 1 thereafter, the office shall submit an annual
14 written report to the general assembly summarizing the office's provision
15 of competency restoration education, ~~and~~ its efforts toward the
16 coordination of competency restoration education with other existing
17 services, AND THE RESULTS OF THE JAIL-BASED BEHAVIORAL HEALTH
18 SERVICES PROGRAM CREATED IN SECTION 27-60-106. The report must
19 include:

20 (d) A description of opportunities to maximize and increase
21 available resources and funding; ~~and~~

22 (e) A description of gaps in and conflicts with existing funding,
23 services, and programming essential to the effective restoration of
24 competency for juveniles and adults; AND

25 (f) A DESCRIPTION OF THE SERVICES FUNDED THROUGH THE
26 JAIL-BASED BEHAVIORAL HEALTH SERVICES PROGRAM CREATED IN
27 SECTION 27-60-106.

1 **SECTION 3.** In Colorado Revised Statutes, **add** 27-60-106 as
2 follows:

3 **27-60-106. Jail-based behavioral health services program -**
4 **purpose - created - funding.** (1) THERE IS CREATED IN THE OFFICE THE
5 JAIL-BASED BEHAVIORAL HEALTH SERVICES PROGRAM, REFERRED TO IN
6 THIS SECTION AS THE "PROGRAM". THE PROGRAM MAY RECEIVE MONEY
7 FROM THE CORRECTIONAL TREATMENT CASH FUND PURSUANT TO SECTION
8 18-19-103 (5)(c)(V).

9 (2) THE PURPOSE OF THE PROGRAM IS TO:

10 (a) PROVIDE ADEQUATE STAFF TO COMPLETE COMPETENCY
11 SCREENINGS, PRESCRIBE PSYCHIATRIC MEDICATIONS AS NECESSARY, AND
12 PROVIDE MENTAL HEALTH COUNSELING AND TRANSITIONAL CARE
13 COORDINATION;

14 (b) TRAIN JAIL STAFF ON BEHAVIORAL HEALTH DISORDERS AND
15 BEST PRACTICES IN WORKING WITH INDIVIDUALS WITH MENTAL HEALTH,
16 SUBSTANCE USE, AND CO-OCCURRING DISORDERS; AND

17 (c) FUND ADMINISTRATIVE COSTS TO JAILS THAT IMPLEMENT THE
18 REQUIREMENTS OUTLINED IN SUBSECTION (3) OF THIS SECTION.

19 (3) A COUNTY JAIL THAT RECEIVES FUNDING THROUGH THE
20 PROGRAM SHALL:

21 (a) SCREEN ALL INDIVIDUALS BOOKED INTO THE JAIL FACILITY
22 WITH STANDARDIZED EVIDENCE-BASED SCREENING TOOLS, AS
23 DETERMINED BY THE OFFICE, FOR MENTAL HEALTH DISORDERS,
24 SUBSTANCE USE DISORDERS, AND SUICIDE RISK;

25 (b) ASSESS ALL INDIVIDUALS BOOKED INTO THE JAIL FACILITY FOR
26 SUBSTANCE USE WITHDRAWAL SYMPTOMS AND DEVELOP PROTOCOLS FOR
27 MEDICAL DETOXIFICATION MONITORING PROCEDURES;

1 (c) ASSESS ALL INDIVIDUALS BOOKED INTO THE JAIL FACILITY FOR
2 PSYCHIATRIC MEDICATION NEEDS BY REQUESTING AND REVIEWING
3 MEDICAL AND PRESCRIPTION HISTORY;

4 (d) HAVE ACCESS TO ALL PSYCHIATRIC MEDICATIONS, AS DEFINED
5 BY THE MEDICATION FORMULARY ESTABLISHED PURSUANT TO SECTION
6 27-70-103;

7 (e) ASSIST IN THE PROVISION OF COORDINATED SERVICES FOR
8 INDIVIDUALS IN JAIL CUSTODY WHO MAY REQUIRE COMPETENCY
9 RESTORATION SERVICES;

10 (f) COORDINATE SERVICES WITH COMMUNITY MENTAL HEALTH
11 PROVIDERS PRIOR TO THE RELEASE OF AN INMATE TO ENSURE CONTINUITY
12 OF CARE FOLLOWING HIS OR HER RELEASE FROM THE JAIL FACILITY;

13 (g) TRACK PERFORMANCE OUTCOMES FOR MEASURES DEVELOPED
14 BY THE OFFICE, INCLUDING BEHAVIORAL HEALTH DISORDER PREVALENCE
15 AND SERVICE DATA THROUGH INFORMATION-SHARING PROCESSES, AS
16 DEFINED BY THE OFFICE; AND

17 (h) PARTNER WITH THE OFFICE TO DEVELOP FEASIBLE HEALTH
18 INFORMATION EXCHANGE STRATEGIES FOR MEDICAL AND BEHAVIORAL
19 HEALTH RECORDS.

20 **SECTION 2. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
4.10.18

DRAFT

Temporary storage location: C:\Users\Jane_Ritter\Desktop\Attachments\Behavioral health court liaison program.tmp

LLS NO. 18-######_ Jane Ritter x4342

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Statewide Behavioral Health Court Liaison Prog"

A BILL FOR AN ACT

101 **CONCERNING ESTABLISHING A STATEWIDE BEHAVIORAL HEALTH**
102 **COURT LIAISON PROGRAM.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Budget Committee. The bill establishes in the office of the state court administrator (office) a statewide behavioral health court liaison program (program). The purpose of the program is to identify and dedicate local behavioral health professionals as court liaisons (court

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

liaisons) in each state judicial district to facilitate communication and collaboration between judicial, health care, and behavioral health systems. The office shall administer the program and establish procedures, timelines, and funding guidelines for the program. Program funding must be allocated to judicial districts based on case volume, geographical complexity, and density of need. Specific duties of the court liaisons are outlined, as well as reporting requirements.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 2 to article 11.9 of title 16 as follows:

PART 2

STATEWIDE BEHAVIORAL HEALTH COURT

LIAISON PROGRAM

16-11.9-201. Legislative declaration and intent. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) COLORADO'S CITIZENS WHO ARE LIVING WITH MENTAL HEALTH AND SUBSTANCE USE DISORDERS ARE OVER-REPRESENTED IN THE CRIMINAL JUSTICE SYSTEM, AND THEY ARE AT A SIGNIFICANTLY GREATER RISK OF INCURRING CRIMINAL JUSTICE INVOLVEMENT, LONGER TERMS OF INVOLVEMENT, AND HARSHER CONSEQUENCES OF THAT INVOLVEMENT WHEN COMPARED TO THE GENERAL PUBLIC;

(b) COLORADO MUST MAKE A COMMITMENT TO ENSURE THAT ALL INDIVIDUALS WITHIN THE CRIMINAL JUSTICE SYSTEM ARE TREATED FAIRLY AND HUMANELY, REGARDLESS OF THEIR BEHAVIORAL HEALTH HISTORY OR MENTAL STATE;

(c) INDIVIDUALS WHO BECOME INVOLVED WITH THE CRIMINAL JUSTICE SYSTEM PRIMARILY DUE TO A MENTAL HEALTH OR CO-OCCURRING SUBSTANCE USE DISORDER SHOULD BE DIVERTED INTO TREATMENT, RATHER THAN SUBJECTED TO UNNECESSARY CRIMINAL JUSTICE

1 INVOLVEMENT; AND

2 (d) THERE IS A SIGNIFICANT NEED FOR ENHANCED
3 COMMUNICATION BETWEEN HEALTH CARE SYSTEMS, BEHAVIORAL HEALTH
4 SYSTEMS, AND CRIMINAL JUSTICE ENTITIES, INCLUDING LAW
5 ENFORCEMENT, DEFENSE ATTORNEYS, DISTRICT ATTORNEYS, JUDGES, AND
6 PROBATION, TO FOSTER COLLABORATION THAT PROVIDES ALL INDIVIDUALS
7 WITH A FAIR CHANCE OF LIVING A HEALTHY AND PRODUCTIVE LIFE.

8 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

9 (a) COLORADO HAS AN OBLIGATION TO ENSURE THAT ENTITIES
10 WITHIN THE CRIMINAL JUSTICE SYSTEM ARE EQUIPPED WITH A GREATER
11 UNDERSTANDING OF BEHAVIORAL HEALTH TREATMENT OPTIONS IN THE
12 COMMUNITY AND OPPORTUNITIES TO REDIRECT INDIVIDUALS AWAY FROM
13 CRIMINAL JUSTICE PROCEEDINGS; AND

14 (b) COMMUNITY MENTAL HEALTH PROVIDERS, INCLUDING
15 COMMUNITY MENTAL HEALTH CENTERS, ARE A CRITICAL COMPONENT OF
16 ACHIEVING POSITIVE OUTCOMES FOR INDIVIDUALS LIVING WITH MENTAL
17 HEALTH, BEHAVIORAL HEALTH, AND SUBSTANCE USE DISORDERS AND
18 HAVE LONG HELD AN ESSENTIAL ROLE IN ENGAGING CRIMINAL JUSTICE
19 ENTITIES.

20 (3) THE GENERAL ASSEMBLY THEREFORE FINDS THAT IT IS
21 CRITICAL TO CREATE A NETWORK OF PROFESSIONALS WHO CAN
22 COMPREHENSIVELY BRIDGE THE CRIMINAL JUSTICE SYSTEM AND THE
23 COMMUNITY BEHAVIORAL HEALTH SYSTEMS ACROSS THE STATE IN ORDER
24 TO:

25 (a) PROMOTE POSITIVE OUTCOMES FOR INDIVIDUALS LIVING WITH
26 MENTAL HEALTH OR CO-OCCURRING BEHAVIORAL HEALTH CONDITIONS;

27 (b) INFORM CRIMINAL JUSTICE ENTITIES ABOUT COMMUNITY

1 TREATMENT OPTIONS;

2 (c) CONNECT INDIVIDUALS TO BEHAVIORAL HEALTH SERVICES;

3 AND

4 (d) SERVE AS A RESOURCE FOR COMMUNITIES THAT ARE PURSUING
5 ALTERNATIVE SENTENCING, REDIRECTION, DIVERSION, AND NO-FILE
6 OPTIONS.

7 (4) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT A
8 STATEWIDE BEHAVIORAL HEALTH COURT LIAISON PROGRAM MUST
9 PROVIDE A METHOD FOR COLLABORATION AND CONSULTATION AMONG
10 BEHAVIORAL HEALTH PROVIDERS, DISTRICT ATTORNEYS, AND DEFENSE
11 ATTORNEYS ABOUT REDIRECTION, DIVERSION, COMPETENCY
12 EVALUATIONS, RESTORATION TO COMPETENCY SERVICES, AND OTHER
13 RELEVANT DECISIONS AND ISSUES FACING INDIVIDUALS WITH MENTAL
14 HEALTH OR CO-OCCURRING BEHAVIORAL HEALTH CONDITIONS WHO ARE
15 INVOLVED WITH THE CRIMINAL JUSTICE SYSTEM, INCLUDING
16 APPROPRIATENESS FOR COMMUNITY TREATMENT AND RESOURCE
17 AVAILABILITY.

18 **16-11.9-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "BEHAVIORAL HEALTH CONDITION" REFERS TO MENTAL
21 HEALTH AND CO-OCCURRING SUBSTANCE USE CONDITIONS THAT ARE
22 INDICATIVE OF A POSSIBLE BEHAVIORAL HEALTH PROBLEM, CONCERN, OR
23 DISORDER.

24 (2) "BEHAVIORAL HEALTH SERVICES" OR "BEHAVIORAL HEALTH
25 SYSTEMS" MEANS SERVICE SYSTEMS THAT ENCOMPASS PREVENTION AND
26 PROMOTION OF EMOTIONAL HEALTH, PREVENTION AND TREATMENT
27 SERVICES FOR MENTAL HEALTH AND SUBSTANCE USE CONDITIONS, AND

1 RECOVERY SUPPORT.

2 (3) "COURT LIAISON" MEANS A PERSON WHO IS HIRED AS A
3 DEDICATED BEHAVIORAL HEALTH COURT LIAISON FOR THE PROGRAM
4 PURSUANT TO SECTION 16-11.9-203.

5 (4) "PROGRAM" MEANS THE STATEWIDE BEHAVIORAL HEALTH
6 COURT LIAISON PROGRAM ESTABLISHED IN SECTION 16-11.9-203.

7 (5) "REDIRECTION SPECIALIST" MEANS THE MENTAL HEALTH AND
8 BEHAVIORAL HEALTH SPECIALISTS WHO OPERATE WITHIN THE CRIMINAL
9 JUSTICE SYSTEM TO ASSIST IN IDENTIFYING AND EVALUATING INDIVIDUALS
10 WITH BEHAVIORAL HEALTH CONDITIONS, PREPARE RECOMMENDATIONS
11 ABOUT SUITABILITY FOR REDIRECTION FROM CRIMINAL JUSTICE
12 INVOLVEMENT TO COMMUNITY BEHAVIORAL HEALTH TREATMENT, AND
13 COMMUNICATE WITH PARTNERS TO FACILITATE THE PROGRAM.

14 (6) "STATE COURT ADMINISTRATOR" MEANS THE STATE COURT
15 ADMINISTRATOR ESTABLISHED PURSUANT TO SECTION 13-3-101.

16 **16-11.9-203. Statewide behavioral health court liaison**
17 **program - established - purpose - administration.** (1) (a) THE
18 STATEWIDE BEHAVIORAL HEALTH COURT LIAISON PROGRAM IS
19 ESTABLISHED IN THE OFFICE OF THE STATE COURT ADMINISTRATOR. THE
20 STATE COURT ADMINISTRATOR IS RESPONSIBLE FOR PROGRAM
21 ADMINISTRATION, INCLUDING ENSURING THAT EACH JUDICIAL DISTRICT
22 IMPLEMENTS A LOCAL PROGRAM DESIGN THAT IS ALIGNED WITH
23 STATEWIDE GOALS AND LEGISLATIVE INTENT.

24 (b) THE PURPOSE OF THE PROGRAM IS TO IDENTIFY AND DEDICATE
25 LOCAL BEHAVIORAL HEALTH PROFESSIONALS AS COURT LIAISONS IN EACH
26 STATE JUDICIAL DISTRICT. THE COURT LIAISONS SHALL FACILITATE
27 COMMUNICATION AND COLLABORATION BETWEEN JUDICIAL AND

1 BEHAVIORAL HEALTH SYSTEMS.

2 (2) THE PROGRAM IS DESIGNED TO KEEP JUDGES, DISTRICT
3 ATTORNEYS, AND DEFENSE ATTORNEYS INFORMED ABOUT AVAILABLE
4 COMMUNITY-BASED BEHAVIORAL HEALTH SERVICES, INCLUDING SERVICES
5 FOR DEFENDANTS WHO HAVE BEEN ORDERED TO UNDERGO A COMPETENCY
6 EVALUATION OR RECEIVE COMPETENCY RESTORATION SERVICES
7 PURSUANT TO ARTICLE 8.5 OF THIS TITLE 16. THE PROGRAM IS FURTHER
8 DESIGNED TO ASSIST CRIMINAL JUSTICE ENTITIES AND LAW ENFORCEMENT
9 PARTNERS IN PURSUING OPPORTUNITIES FOR REDIRECTION, DIVERSION, OR
10 OTHER PROGRAMMING THAT PROMOTES POSITIVE OUTCOMES FOR AN
11 INDIVIDUAL LIVING WITH A BEHAVIORAL HEALTH CONDITION.

12 (3) ON OR BEFORE OCTOBER 1, 2018, AND AS NECESSARY
13 THEREAFTER, THE STATE COURT ADMINISTRATOR SHALL ESTABLISH
14 PROGRAM PROCEDURES, TIMELINES, FUNDING GUIDELINES, AND
15 ACCEPTABLE EXPENSES FOR THE DISTRIBUTION OF PROGRAM FUNDS TO
16 JUDICIAL DISTRICTS. THE STATE COURT ADMINISTRATOR SHALL ALLOCATE
17 PROGRAM FUNDING TO JUDICIAL DISTRICTS BASED ON CASE VOLUME,
18 GEOGRAPHICAL COMPLEXITY, AND DENSITY OF NEED.

19 (4) THE STATE COURT ADMINISTRATOR SHALL IMPLEMENT
20 CAPABILITIES WITHIN THE EXISTING STATEWIDE COURT DATA SYSTEM TO
21 INDICATE BEHAVIORAL HEALTH CONDITIONS IN CASES BROUGHT TO THE
22 COURTS.

23 (5) EACH JUDICIAL DISTRICT SHALL USE ALLOCATED PROGRAM
24 MONEY TO PARTNER WITH A COMMUNITY MENTAL HEALTH PROVIDER,
25 SUCH AS A COMMUNITY MENTAL HEALTH CENTER, THAT IS ABLE TO
26 PROVIDE A CONTINUUM OF COMMUNITY-BASED BEHAVIORAL HEALTH
27 SERVICES IN ITS REGION TO ACCOMPLISH THE PROGRAM GOALS SET FORTH

1 IN SUBSECTIONS (1) AND (2) OF THIS SECTION. PROGRAM MONEY MAY BE
2 USED FOR THE PURPOSES ESTABLISHED BY THE STATE COURT
3 ADMINISTRATOR PURSUANT TO SUBSECTION (3) OF THIS SECTION,
4 INCLUDING BUT NOT LIMITED TO:

5 (a) PROGRAM IMPLEMENTATION AND START-UP COSTS
6 DETERMINED NECESSARY AND APPROPRIATE BY THE STATE COURT
7 ADMINISTRATOR;

8 (b) CONTRACTING FOR AN ADEQUATE NUMBER OF DEDICATED
9 COURT LIAISONS RESPONSIBLE FOR THE DUTIES SET FORTH IN SECTION
10 16-11.9-204;

11 (c) PRIORITIZING, THROUGH THE COURT LIAISONS, CASES WHERE
12 COMPETENCY TO PROCEED AND RESTORATION TO COMPETENCY ARE
13 RAISED, AND PROVIDING NECESSARY SERVICES FOR SUCH CASES; AND

14 (d) OPERATIONAL FUNDING FOR COURT LIAISON ACTIVITIES AS
15 DETERMINED NECESSARY AND APPROPRIATE BY THE STATE COURT
16 ADMINISTRATOR.

17 **16-11.9-204. Behavioral health court liaisons - duties and**
18 **responsibilities - consultation and collaboration.** (1) A COURT LIAISON
19 HIRED PURSUANT TO THIS PART 2 HAS THE FOLLOWING DUTIES AND
20 RESPONSIBILITIES:

21 (a) ACCESSING LOCAL COMMUNITY MENTAL HEALTH CENTER
22 RECORDS AND APPOINTMENT SYSTEMS, AS ALLOWED BY STATE AND
23 FEDERAL LAW, TO ASSESS TREATMENT HISTORY AND MAKE DIRECT
24 CONNECTIONS TO SERVICES FOR A DEFENDANT WITH A BEHAVIORAL
25 HEALTH CONDITION;

26 (b) SCREENING FOR BEHAVIORAL HEALTH CONDITIONS AND
27 DETERMINING APPROPRIATE REFERRAL AND TREATMENT OPTIONS WHEN

1 NECESSARY;

2 (c) USING THE BEHAVIORAL HEALTH INFORMATION FROM THE
3 STATEWIDE COURT DATA SYSTEM, AS UPDATED PURSUANT TO SECTION
4 16-11.9-203 (4), TO MAKE A DETERMINATION REGARDING WHETHER A
5 BEHAVIORAL HEALTH CONSULTATION WOULD BE BENEFICIAL IN ACHIEVING
6 PROGRAM GOALS AND OBJECTIVES. IF THE COURT LIAISON OPERATING IN
7 THE JUDICIAL DISTRICT DETERMINES THAT A CONSULTATION WOULD BE
8 BENEFICIAL, THE COURT LIAISON SHALL CONSULT WITH EACH JUDICIAL
9 OFFICER, DEFENSE ATTORNEY, AND DISTRICT ATTORNEY WORKING ON THE
10 CASE, AND THE PARTIES MUST IDENTIFY, AT A MINIMUM, THE FOLLOWING
11 INFORMATION:

12 (I) THE NATURE OF THE INDIVIDUAL'S BEHAVIORAL HEALTH
13 CONDITION;

14 (II) WHETHER THE INDIVIDUAL HAS A READILY AVAILABLE
15 HISTORY OF BEHAVIORAL HEALTH TREATMENT;

16 (III) WHETHER THE INDIVIDUAL IS A CURRENT OR PAST CLIENT OF
17 A COMMUNITY MENTAL HEALTH CENTER IN THE JUDICIAL DISTRICT;

18 (IV) WHETHER THERE ARE OPPORTUNITIES FOR REDIRECTION INTO
19 COMMUNITY TREATMENT AS AN ALTERNATIVE TO FILING CHARGES
20 AGAINST THE INDIVIDUAL; AND

21 (V) THE LOCAL, REGIONAL, OR STATE AVAILABILITY OF
22 RESOURCES THAT THE INDIVIDUAL MAY NEED, INCLUDING BUT NOT
23 LIMITED TO:

24 (A) OUTPATIENT AND OUT-OF-CUSTODY COMPETENCY
25 EVALUATIONS OR COMPETENCY RESTORATION SERVICES;

26 (B) BEHAVIORAL HEALTH SERVICES OR PSYCHIATRIC SERVICES OR
27 SUPPORTS; OR

- 1 (C) EMPLOYMENT, HOUSING, OR OTHER SOCIAL SUPPORTS;
2 (d) FACILITATING COMMUNICATION BETWEEN BEHAVIORAL
3 HEALTH SYSTEMS AND CRIMINAL JUSTICE ENTITIES AND PROVIDING
4 CONSULTATION TO CRIMINAL JUSTICE PERSONNEL REGARDING
5 BEHAVIORAL HEALTH AND COMMUNITY TREATMENT OPTIONS; AND
6 (e) COORDINATING WITH REDIRECTION SPECIALISTS AND ANY
7 JAIL-BASED BEHAVIORAL HEALTH PROVIDERS TO ENSURE CONTINUITY OF
8 CARE AND SERVICE DELIVERY.

9 (2) IF A CONSULTATION OCCURS PURSUANT TO SUBSECTION (1)(c)
10 OF THIS SECTION, THE STATEWIDE COURT DATA SYSTEM MUST INCLUDE A
11 RECORD OF SUCH CONSULTATION ON THE INDIVIDUAL'S CASE RECORDS.

12 **16-11.9-205. Reporting requirements.** (1) THE STATE COURT
13 ADMINISTRATOR SHALL COLLABORATE WITH EACH JUDICIAL JURISDICTION
14 IN THE STATE AND EACH COURT LIAISON TO COLLECT AND ANALYZE DATA
15 REGARDING THE WORK OF THE PROGRAM, INCLUDING DATA THAT
16 DEMONSTRATES THE IMPACT OF CONSULTATION, UTILIZATION OF THE
17 COURT LIAISONS BY JUDICIAL DISTRICTS, AND THE EFFICIENCY OF THE
18 PROGRAM IN PROMOTING THE LEGISLATIVE INTENT AND STATEWIDE GOALS
19 AS SET FORTH IN THIS PART 2.

20 (2) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-1-136, ON
21 OR BEFORE OCTOBER 1, 2019, AND EACH OCTOBER 1 THEREAFTER, THE
22 STATE COURT ADMINISTRATOR SHALL REPORT TO THE JOINT BUDGET
23 COMMITTEE, OR ANY SUCCESSOR COMMITTEE, THE NUMBER OF CASES IN
24 THE PAST YEAR FOR WHICH A BEHAVIORAL HEALTH CONDITION WAS
25 IDENTIFIED AND RESULTED IN A CONSULTATION PURSUANT TO SECTION
26 16-11.9-204, AND OUTCOMES RELATED TO THE LEGISLATIVE INTENT AND
27 STATEWIDE GOALS OF THE PROGRAM, AS SET FORTH IN THIS PART 2.

1 **SECTION 2. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety. <{*Safety clause*
4 *OK?*>

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the JBC
FROM Steve Allen, JBC Staff (303-866-4961)
DATE April 10, 2018
SUBJECT JBC Bill for Judicial Center Controlled Maintenance

During figure setting for the Judicial Branch, the JBC voted to draft a bill that would create a dedicated controlled-maintenance cash fund to pay for the anticipated controlled maintenance needs of the Ralph L. Carr Judicial Center over the life of the building. This new “Justice Center Maintenance Fund” would receive appropriations from the existing Justice Center Cash Fund, which in turn gets revenue from rent paid by tenants, parking fees, and other cash-fund sources. A copy of the March 1 memo that JBC staff presented during Judicial figure setting is attached.

With the permission of the JBC Chair, JBC staff subsequently contacted the Capital Development Committee (CDC) about the bill and discovered that the CDC was also interested in the bill and was possibly interested in carrying it. The CDC discussed the bill during two of its meetings and provided input to the bill drafter. The attached draft reflects the recommendations of JBC staff as well as ideas from the CDC and CDC staff. The most significant differences between the March 1 memo and this bill draft are (1) CDC review of controlled maintenance expenditures of a type that it normally reviews and (2) the lack of a \$3.0 million cash fund appropriation from the Justice Center Cash Fund into the new Maintenance Fund. Change (1) would lead the CDC to make recommendations to the JBC concerning funding for about $\frac{3}{4}$ of the items on the projected Carr Center expenditure list. Change (2) is not significant because an equivalent appropriation can be placed in next year’s Long Bill. Note that the first expenditures from the Maintenance Fund would occur in FY 2020-21.

The CDC will consider this bill draft on Thursday, April 19. The CDC may decide that it would like to carry the bill at that time.

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
4.10.18

DRAFT

LLS NO. 18-1099.01 Esther van Mourik x4215

COMMITTEE BILL

Committee

BILL TOPIC: "Create Justice Center Maintenance Fund"

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE JUSTICE CENTER MAINTENANCE**
102 **FUND.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

_____ **Committee.** The bill creates the justice center maintenance fund that consists of money appropriated by the general assembly to the maintenance fund from the justice center cash fund to be used for controlled maintenance needs of the Ralph L. Carr Colorado judicial center.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 13-32-101, **add**
3 (7)(d) as follows:

4 **13-32-101. Docket fees in civil actions - judicial stabilization**
5 **cash fund - support registry fund created - definition.** (7) (d) (I) THE
6 JUSTICE CENTER MAINTENANCE FUND IS HEREBY CREATED IN THE STATE
7 TREASURY AND REFERRED TO IN THIS SUBSECTION (7) AS THE
8 "MAINTENANCE FUND". THE MAINTENANCE FUND CONSISTS OF MONEY
9 ANNUALLY APPROPRIATED BY THE GENERAL ASSEMBLY TO THE
10 MAINTENANCE FUND FROM THE JUSTICE CENTER CASH FUND AND ANY
11 OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR
12 TRANSFER TO THE FUND. THE AMOUNT APPROPRIATED TO THE
13 MAINTENANCE FUND FROM THE JUSTICE CENTER CASH FUND MUST BE
14 EQUAL TO THE AMOUNT DESCRIBED IN SUBSECTION (7)(d)(II) OF THIS
15 SECTION. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
16 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
17 MAINTENANCE FUND TO THE MAINTENANCE FUND. SUBJECT TO ANNUAL
18 APPROPRIATION BY THE GENERAL ASSEMBLY AND SUBJECT TO CAPITAL
19 DEVELOPMENT REVIEW OF ANY CONTROLLED MAINTENANCE NEEDS THAT
20 THE COMMITTEE WOULD TYPICALLY REVIEW FOR STATE-FUNDED
21 PROJECTS, MONEY FROM THE MAINTENANCE FUND MAY BE EXPENDED FOR
22 CONTROLLED MAINTENANCE NEEDS OF THE RALPH L. CARR COLORADO
23 JUDICIAL CENTER.

24 (II) CURRENT AND PROJECTED APPROPRIATIONS TO THE
25 MAINTENANCE FUND FROM THE JUSTICE CENTER CASH FUND SHOULD BE
26 SUFFICIENT TO PAY FOR CURRENT AND PROJECTED CONTROLLED

1 MAINTENANCE NEEDS FOR THE RALPH L. CARR COLORADO JUDICIAL
2 CENTER AS OUTLINED IN THE REPORT REQUIRED IN SUBSECTION (7)(d)(IV)
3 OF THIS SECTION, TAKING INTO ACCOUNT ANY PROJECTED INTEREST
4 EARNINGS ON THE MAINTENANCE FUND.

5 (III) FOR PURPOSES OF THIS SUBSECTION (7)(d), "CONTROLLED
6 MAINTENANCE" HAS THE SAME MEANING AS SET FORTH IN SECTION
7 24-30-1301 (4); EXCEPT THAT IT MAY INCLUDE ANY MAINTENANCE NEEDS
8 THAT WOULD ORDINARILY BE FUNDED IN THE JUDICIAL DEPARTMENT'S
9 OPERATING BUDGET AND IT MAY INCLUDE INFORMATION TECHNOLOGY
10 EQUIPMENT TO SUPPORT NETWORK OPERATIONS, SUCH AS SERVERS OR
11 UNINTERRUPTIBLE POWER SUPPLY UNITS, OR TO REGULATE OR CONTROL
12 BUILDING SYSTEMS, SUCH AS LIGHTING OR HVAC.

13 (IV) THE JUDICIAL DEPARTMENT SHALL PROVIDE A WRITTEN
14 REPORT TO THE JOINT BUDGET COMMITTEE AND THE CAPITAL
15 DEVELOPMENT COMMITTEE ON NOVEMBER 1, 2018, AND EACH NOVEMBER
16 1 THEREAFTER, THAT DOCUMENTS EXPENDITURES THAT HAVE BEEN MADE
17 FROM THE MAINTENANCE FUND AND THAT DOCUMENTS PROJECTED
18 FUTURE EXPENDITURES FROM THE MAINTENANCE FUND OVER A
19 TWENTY-YEAR TERM. NOTWITHSTANDING SECTION 24-1-136 (11)(a), THE
20 REPORTING REQUIREMENT SPECIFIED IN THIS SUBSECTION (7)(d)(IV)
21 CONTINUES INDEFINITELY.

22 **SECTION 2.** In Colorado Revised Statutes, 24-75-402, **amend**
23 (5)(ll); and **add** (5)(nn) and (5)(oo) as follows:

24 **24-75-402. Cash funds - limit on uncommitted reserves -**
25 **reduction in the amount of fees - exclusions - repeal.**
26 (5) Notwithstanding any provision of this section to the contrary, the
27 following cash funds are excluded from the limitations specified in this

1 section:

2 (ll) The technology advancement and emergency fund created in
3 section 24-37.5-115; ~~and~~

4 (nn) THE JUSTICE CENTER CASH FUND CREATED IN SECTION
5 13-32-101 (7)(a); AND

6 (oo) THE JUSTICE CENTER MAINTENANCE FUND CREATED IN
7 SECTION 13-32-101 (7)(d).

8 **SECTION 3. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2018 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the JBC
FROM Steve Allen, JBC Staff (303-866-4961)
DATE March 1, 2018
SUBJECT Recommended JBC Bill for Judicial Center Controlled Maintenance

JBC staff recommends that the Committee carry a bill to create a dedicated controlled maintenance cash fund to pay for controlled maintenance expenses of the Ralph L. Carr Judicial Center over the life of the building. The fund would be named the "Carr Center Controlled Maintenance Cash Fund." The bill would transfer \$3,000,000 from the Justice Center Cash Fund into the new cash fund on July 1, 2018. The fund would be subject to annual appropriation by the General Assembly to pay the Carr Center's controlled maintenance expenses and other designated expenses that recur periodically. The list of covered expenses could potentially change over time. Annual appropriations into the fund would be made in the Long Bill from the Justice Center Cash Fund, which receives revenues from docket fees and lease payments made by building tenants. The first annual appropriation into the fund would be in FY 2019-20. The annual appropriations would be level but could periodically be increased to reflect the higher cost of controlled maintenance due to inflation. The Judicial Department's annual budget requests would identify controlled maintenance expenses for the upcoming fiscal year and the JBC would include a corresponding appropriation from the new cash fund in the Long Bill.

The Judicial Department requested this bill when it submitted its budget last November and proposed the initial \$3 million transfer. At briefing, the JBC asked the Department to estimate the Carr Center's future controlled maintenance needs and submit them to the Committee. **The Department's architect, its property management company, and the Carr Center's building engineer jointly developed the list of controlled maintenance needs at the end of this memo.** The list was also based on consultation with vendors concerning asset costs and projected lives.

Commenting on this list, the state architect noted some omissions and the inclusion of at least two items (x-ray machines and metal detectors) that are not normally considered controlled maintenance because they are movable and are not part of the building. The omitted items were:

- Costs of maintaining the windows and caulking around windows.
- Interior paint and sealing.
- Pipes and plumbing. Some parts of the sprinkler system have standing water in them at all times and will eventually need replacement.
- Fire alarms, fire control, cameras, security devices, controlled access doors.

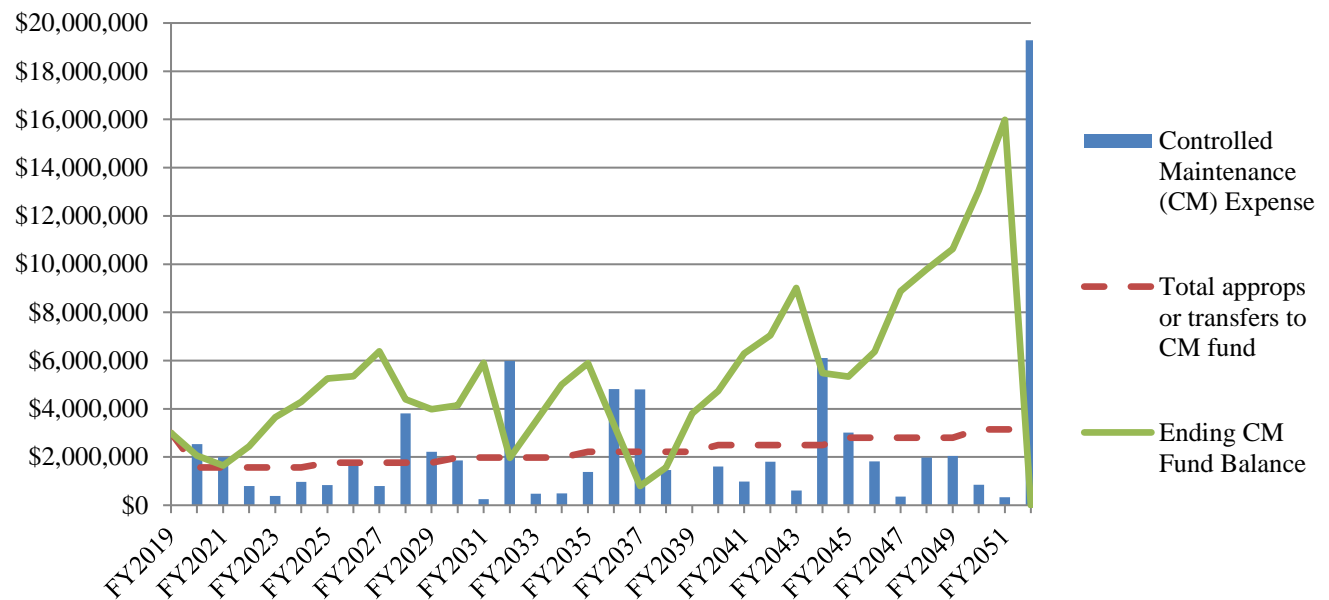
The Department is now looking at adding these items to the list. While x-ray equipment and metal detectors should technically be excluded, staff sees no harm in leaving them on the list. Any substantial periodic expense could be included in the funding plan as long as the Department and the JBC clearly understand what is included. If the Department uses the fund to pay expenses that are not on the list, the fund will be unable to pay all the anticipated costs that are on the list.

The Carr Center opened in 2013 so building assets with the shortest lives (7 years) are due for replacement in FY 2019-20. The two longest-lived assets (at the bottom of the table) last 40 years and together are the most expensive items on this list. Thus in 2052, 40 years after the building opened, all of the controlled maintenance assets in the Carr Center will have been replaced at least once. The next complete replacement cycle will conclude 40 years later in 2092.

Based on this list, the Department proposed a funding plan that staff refined. The staff plan, which is designed to pay controlled maintenance needs through 2052, is based on the following assumptions:

- Contributions to the fund will pay all controlled maintenance costs through 2052.
- The interest rate the Colorado Treasury pays to the fund will average 1%
- Inflation rates will average 2.35% annually, which approximates recent inflation. Controlled maintenance costs will rise at this rate.
- The annual appropriation into the cash fund will be adjusted upward once every 5 years to catch up with inflation.

Based on these assumptions staff determined that the first annual appropriation into the fund (in the year after the initial \$3 million contribution) should equal \$1,566,773, rising to \$1,759,727 in 2025 and to \$1,976,445 in 2030. The following chart shows the controlled maintenance expenses, the slowly rising annual contributions to the fund, and a fund balance that returns to 0 in 2052. **The Department finds these appropriations acceptable.**



The plan is flexible by design because needs will evolve. If in five years, the inflation forecast proves too low, or the cost on an item on the list differs significantly from the forecast, the plan can be recalculated and appropriations into the fund can be adjusted.

While experimenting with the spreadsheet that generated this chart, staff realized that inflation is a very important consideration. If the inflation rate is 2.35 percent, then prices will double every 28 years, so in 2046 replacement assets will cost twice as much as they do now. It will be important to increase appropriations periodically by that amount, which can only be done if Judicial revenue sources rise in step with inflation. Periodically the JBC may want to take the lead and sponsor bills that adjusts some judicial Department fees in step with inflation.

Ralph L. Carr Judicial Center Controlled Maintenance Needs Through FY 2030-31																
Project Title	Project Description	Life	Current Cost	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
Network Switches	Replace Network Switches.	7	314,600	0	0	329,560	0	0	0	0	0	0	387,748	0	0	0
Lighting Control	Upgrade Lighting Control Upgrade	7	31,460	0	0	32,956	0	0	0	0	0	0	38,775	0	0	0
WAP Replacement	Replace Wireless Access Point (WAPs)	8	943,800	0	0	988,680	0	0	0	0	0	0	0	1,190,580	0	0
Court's Exterior Lighting	Replace existing lighting.	7	180,895	0	0	189,497	0	0	0	0	0	0	222,955	0	0	0
X-Ray Replacement	Replace existing x-ray machines in lobbies	7	78,650	0	0	82,390	0	0	0	0	0	0	96,937	0	0	0
Core Switches	Replace and upgrade the Carr network switches	8	300,443	0	307,503	0	0	0	0	0	0	0	370,299	0	0	0
DAS	Replacement of Distribution Antenna System for cell phone	8	1,730,300	0	1,770,962	0	0	0	0	0	0	0	2,132,613	0	0	0
UPS Battery Replacement	Battery Replacement throughout Carr	4	94,380	0	96,598	0	0	0	106,003	0	0	0	116,324	0	0	0
AV Replacement	AV Replacement for Carr Public Areas	8	354,974	0	363,316	0	0	0	0	0	0	0	437,509	0	0	0
AV Replacement	AV Replacement for Carr Public Areas	8	354,974	0	0	371,853	0	0	0	0	0	0	0	447,790	0	0
AV Replacement	AV Replacement for Carr Public Areas	8	354,974	0	0	0	380,592	0	0	0	0	0	0	0	458,313	0
Tower Carpet Replacement	Replace Carpet in Office Tower (20% of floors)	10	346,060	0	0	0	371,035	0	0	0	0	0	0	0	0	0
Tower Carpet Replacement	Replace Carpet in Office Tower (20% of floors)	10	346,060	0	0	0	0	379,754	0	0	0	0	0	0	0	0
Tower Carpet Replacement	Replace Carpet in Office Tower (20% of floors)	10	346,060	0	0	0	0	0	388,679	0	0	0	0	0	0	0
Tower Carpet Replacement	Replace Carpet in Office Tower (20% of floors)	10	346,060	0	0	0	0	0	0	397,813	0	0	0	0	0	0
Tower Carpet Replacement	Replace Carpet in Office Tower (20% of floors)	10	346,060	0	0	0	0	0	0	0	407,161	0	0	0	0	0
Test Davits	Test of roof Davits	10	39,325	0	0	0	42,163	0	0	0	0	0	0	0	0	0
Courts Carpet Replacement	Replace carpet in the Courts portion of Carr (1/3)	12	222,842	0	0	0	0	0	250,285	0	0	0	0	0	0	0
Courts Carpet Replacement	Replace carpet in the Courts portion of Carr (1/3)	12	222,842	0	0	0	0	0	0	256,167	0	0	0	0	0	0
Courts Carpet Replacement	Replace carpet in the Courts portion of Carr (1/3)	12	222,842	0	0	0	0	0	0	0	262,187	0	0	0	0	0
Heat Trace	Partial replacement of existing Heat Trace System	12	196,625	0	0	0	0	0	220,840	0	0	0	0	0	0	0
Network Servers	Replace Building Network Servers	13	157,300	0	0	0	0	0	0	180,824	0	0	0	0	0	0
UPS / 300KVA	Replace existing units.	14	589,875	0	0	0	0	0	0	0	0	710,334	0	0	0	0
UPS / 300KVA	Replace existing units.	14	589,875	0	0	0	0	0	0	0	0	0	0	0	761,599	0
UPS / 160KVA	Replace existing unit.	14	487,630	0	0	0	0	0	0	0	573,727	0	0	0	0	0
CRAC Unit Replacement	Replace existing CRAC Units in Data Center	14	401,115	0	0	0	0	0	0	0	471,937	0	0	0	0	0
Courts Garage Door	Replace existing overhead door	15	66,066	0	0	0	0	0	0	0	0	79,557	0	0	0	0
Fire Alarm System	Retrofit Fire Detection System	17	267,410	0	0	0	0	0	0	0	0	0	0	337,331	0	0
Replace Boilers	Replace existing Boilers (Quantity 3)	18	188,760	0	0	0	0	0	0	0	0	0	0	238,116	0	0
Replace Boilers	Replace existing Boilers (Quantity 3)	18	188,760	0	0	0	0	0	0	0	0	0	0	0	243,712	0
Replace Boilers	Replace existing Boilers (Quantity 3)	18	188,760	0	0	0	0	0	0	0	0	0	0	0	0	249,439
Replace Boilers	Replace existing Boilers (Quantity 3)	18	188,760	0	0	0	0	0	0	0	0	0	0	0	0	0
Air Handler - AHU chilled water coil	Replace AHU chilled water coil	18	75,504	0	0	0	0	0	0	0	0	0	0	0	97,485	0
Air Handler - AHU hot water coil	Replace AHU hot water coil	18	75,504	0	0	0	0	0	0	0	0	0	0	0	0	97,485
Replace Snow Melt Equipment	Replace Snow Melt mechanical equipment.	18	157,300	0	0	0	0	0	0	0	0	0	0	0	203,093	0
Replace Emergency Generators	Replace Emergency Generators for Carr Complex (Quantity 2)	20	1,559,283	0	0	0	0	0	0	0	0	0	0	0	0	0
Replace Cooling Tower	Replace Cooling Tower (4 Cells)	20	385,385	0	0	0	0	0	0	0	0	0	0	0	0	0
Replace Chillers	Replace Chillers (530 Ton - Quantity 2)	20	943,800	0	0	0	0	0	0	0	0	0	0	0	0	0
Replace Chillers	Replace Chillers (220 Ton - Quantity 2)	20	786,500	0	0	0	0	0	0	0	0	0	0	0	0	0
BAS Jaces	Replace existing Jaces	20	81,796	0	0	0	0	0	0	0	0	0	0	0	0	0
Automatic Transfer Switch	Replace existing transfer switch.	25	283,140	0	0	0	0	0	0	0	0	0	0	0	0	0
Gerator Paralleling Switchgear (GPS)	Replace existing GPS	25	201,344	0	0	0	0	0	0	0	0	0	0	0	0	0
AHU - Motor Banks	Replace motor banks in existing Air Handler Unit	25	418,418	0	0	0	0	0	0	0	0	0	0	0	0	0
Pumps - HVAC	Replace existing HVAC Pumps	25	153,368	0	0	0	0	0	0	0	0	0	0	0	0	0
Replace Roof	Replace existing roofing.	25	786,500	0	0	0	0	0	0	0	0	0	0	0	0	0
Primary Electrical Switch Gear	Replace Primary Switch Gear for Carr	40	528,528	0	0	0	0	0	0	0	0	0	0	0	0	0
Sub-Station Switch Gear	Replace existing Sub-Station Switch Gear (Quantity 6)	40	1,812,096	0	0	0	0	0	0	0	0	0	0	0	0	0

This table assumes that the cost of controlled maintenance item rises 2.35 percent per year, which approximates recent inflation. Because of space constraints the table stops in FY 2030-31, before the last 12 assets on this list are replaced.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee
FROM Amanda Bickel, JBC Staff (x4960)
DATE April 11, 2018
SUBJECT OLLS 18-1184 - JBC Bill for \$18.0 million for Institutions of Higher Education

BACKGROUND ON THE \$18.0 MILLION SET-ASIDE

On March 23, 2018, just prior to closing the Long Bill, the JBC voted to establish a placeholder for \$18,000,000 General Fund for a bill concerning higher education and requested a bill draft. Committee members indicated that they had not decided on the content of the bill or the associated allocations to governing boards.

In light of this, on the same day, staff emailed the Executive Director of the Department of Higher Education and the Department's Budget Director and requested that they assemble a proposal for the use of the funds. **The Department was extremely slow to respond. When it finally did so, it provided a rough outline of a program. Based on the information provided, staff does not recommend that the Committee support this as a JBC bill.**

DEPARTMENT PROPOSAL

Delayed and Incomplete Response

On March 23, staff requested that the Department provide a proposal for the use of the \$18.0 million by Friday March 30 or early the week of April 2. After initially indicating that it would respond early during the week of April 2, the Department contacted staff on April 2 to propose a phone call. When staff was finally able to speak with the Department during the middle of the week of April 2, it became evident that the Department still had not taken the request for a JBC bill draft seriously. At staff's insistence, on Thursday April 4 it provided a 2.5 page draft document, described below.

Department's General Comments - Draft Document

- According to the document, "Previously in the budget-setting process, the Department expressed and communicated to JBC members the benefits of the approach taken in an existing \$18 million proposal that tied funding to certificates, STEM [science, technology, math, and engineering] degrees, completed Pell [low income student] credit hours, and rural institutions. This proposal has support from each institution and aligns with the Master Plan goals. After the set aside was made, the Department worked to affirm higher education support for this approach as it served as the best starting point for allocations."
- *Staff understands this to mean that the Department is supporting the proposal previously provided to staff by the University of Colorado for allocating the \$18.0 million, although the allocation is not included in the draft. This "previously provided" proposal included:*
 - \$4.0 million divided in equal amounts among the three small rural institutions (Adams State University, Western State Colorado University, and Fort Lewis College);
 - \$4.0 million allocated to Metropolitan State University of Denver and Colorado Mesa University based on their share of PELL College Opportunity Fund stipend credit hours
 - \$4.0 million allocated to the four research institutions (Colorado School of Mines, Colorado State University, the University of Colorado, and the University of Northern Colorado) based on share of STEM completions;

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- \$5.0 million allocated to state community colleges, area technical colleges, and local district colleges (Aims and Colorado Mountain College) based on the number of certificates awarded lasting more than one year but less than two.
- The Department indicates that: “It is working to ensure the proposal is not an alternative to the current funding allocation model...but is meaningful in its alignment with the State’s goals as outlined in the Master Plan”.
 - The Master Plan states the need for increased attainment of low-income students.
 - Increasing STEM credentials and certificates is specifically mentioned in the Master Plan and is identified as a need in the Talent Pipeline Report.
 - Increasing certificate production is also called out specifically in the Master Plan.

Bill Draft Components Outlined in the Draft Document

The write-up calls for:

- “A strong legislative declaration” and “definitions as necessary” (without providing content).
- The allocation would “support STEM credentials, certificates, rural access, and completed Pell credit hours”.
- The bill should specify the percentage of total funds allocated to each one of the target areas and put that into the allocation methodology for out-years, so that the shares stay the same, even if the total funding available changes.
- “Each institution may identify how they wish to spend the funds as long as it aligns with the Master Plan and accelerates achievement of state goals”. Institutions should submit a report to the Department/the Commission on Higher Education (CCHE) for review outlining the proposal by July 1, 2018. “The Department and the Commission should be given an opportunity to review these plans and suggest ways to strengthen the proposal’s alignment with the Master Plan.” If an institution changes its approach, a new report would need to be submitted.
- Annual reporting to the CCHE and the JBC on spending, student outcomes, and the progress made toward Master Plan goals by each institution, with a report submitted to the CCHE and the JBC between December 1 and December 15.

STAFF OBSERVATIONS

Based on the limited information provided, it appears to staff that the proposal:

- *Represents a “model on top of a model”, i.e.,* the Department proposes an ongoing a statutory allocation structure that is different from the existing H.B. 14-1319 funding model but that does not blend with or replace the existing model.
- *Includes no commitment to reduce tuition* associated with an increase in funding.
- *Includes no meaningful oversight to ensure sound proposals or outcomes.* While the institutions will submit their plans to the Department and CCHE, neither entity will have any real authority to reject or modify the proposal. Similarly, while the institutions will submit reports to the General Assembly, the proposed statutory allocation formula means that the General Assembly will have no meaningful way of selecting any particular programs as worthwhile or not.¹

¹ In addition, if a report is not submitted until mid-December each year, it will arrive *after* JBC staff’s annual budget briefing and Department SMART hearings are usually scheduled.)

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- Staff recognizes that the existing higher education funding model is largely driven by volume and that, in the current strong economy, the community colleges and “access” institutions have had flat and declining enrollment and thus smaller increases than they would like from the H.B. 14-1319 model. This is an understandable concern, but *staff fails to understand why a concern about insufficient funding for community colleges and access institutions has morphed into a plan for a new allocation formula that also provides additional funding for research institutions.*
- In staff’s opinion, the State could and should do more to make higher education more accessible and affordable for low and middle-income students and to help these students complete their programs. However, based on the information provided to staff, the “model on a model” included in this proposal does not seem to seriously target the State’s most pressing higher education problems.